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## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

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No. 365

JAY G. WILLIAMS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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PETITION FOR CERTIORARI FILED FEBRUARY 4, 1950.
CERTIORARI GRANTED OCTOBER 23, 1950.

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1 In the United States District Court in and for the Southern District of Florida.

No. 7279-M-Criminal

UNITED STATES OF AMERICA

vs.

JAY G. WILLIAMS; JOSEPH V. PERRY; JOHN S. BOMBACI; CHARLES R. FORD; ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation.

*Indictment—T. 18 USC § 51 (1946 Ed.) T. 18 USC § 52 (1946 Ed.)—Filed Nov. 15, 1948.*

The Grand Jury charges:

COUNT ONE

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, all of the above named persons being the defendants herein, conspired to injure, oppress, threaten and intimidate Frank J. Purnell, Jr., a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the

2 right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be

subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that the said defendants would arrest and detain and cause to be arrested and detained on or about the 28th day of March, 1947, the said Frank J. Purnell, Jr., and would cause the said Frank J. Purnell, Jr., to go to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, and that they would detain the said Frank J. Purnell, Jr., in said shack and, while the said Frank J. Purnell, Jr., was so detained, the said defendants would then and there illegally strike, bruise, batter, beat, assault and torture the said Frank J. Purnell, Jr., in order illegally to coerce and force the said Frank J. Purnell, Jr., to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Lindsley Lumber Co., and in order illegally to coerce and force the said Frank J. Purnell, Jr., to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Frank J. Purnell, Jr., that the said conspiracy was formulated and entered into by the defendant CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, while acting in their official capacities as aforesaid.

In violation of Section 51, Title 18, United States Code (1946 Ed.).

COUNT TWO

On or about the 28th day of March, A. D. 1947, in
3 the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida,

acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of police officer and prescribing the duties of said office and position, defendants herein did wilfully, under color of the laws, statutes, ordinances, regulations and customs of the State of Florida and of the municipality of Miami in said State creating the office and position of police officer of the municipality of Miami, Florida, and creating the office and position of special police officer of the municipality of Miami, Florida, subject and cause to be subjected Frank J. Purnell, Jr., an inhabitant of the State of Florida, to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said Frank J. Purnell, Jr., and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami,
Florida, and did there detain the said Frank J.
4 Purnell, Jr., and while he was so detained the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said Frank J. Purnell, Jr., in order illegally to coerce and force the said Frank J. Purnell, Jr., to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said

Lindsley Lumber Co., and in order illegally to coerce and force the said Frank J. Purnell, Jr., to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Frank J. Purnell, Jr.

That at the time and places aforesaid, ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, defendants herein, well knowing all of the premises aforesaid, did in the Miami Division of the Southern District of Florida and within the jurisdiction of this Court, wilfully aid and abet in the commission by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI and CHARLES R. FORD, of the offenses described in this Count.

In violation of Section 52, Title 18, United States Code (1946 Ed.).

COUNT THREE

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, all of the above named
5 persons being the defendants herein, conspired to injure, oppress, threaten and intimidate Chester M. Robinson, a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law,

the right and privilege to be immune, while in the custody of persons acting under the color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that the said defendants would arrest and detain and cause to be arrested and detained on or about the 28th day of March, 1947, the said Chester M. Robinson and would cause the said Chester M. Robinson to go to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, and that they would detain the said Chester M. Robinson in said shack and, while the said Chester M. Robinson was so detained, the said defendants would then and there illegally strike, bruise, batter, beat, assault and torture the said Chester M. Robinson, in order illegally to coerce and force the said Chester M. Robinson to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Lindsley Lumber Co., and in order illegally to coerce and force the said Chester M. Robinson to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Chester M. Robinson; that the said conspiracy was formulated and entered into by the defendant CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, while acting in
6 their official capacities as aforesaid.

In violation of Section 51, Title 18, United States Code (1946 Ed.).

COUNT FOUR

On or about the 28th day of March, A. D. 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of

the municipality of Miami, creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of police officer and prescribing the duties of said office and position, defendants herein, did wilfully, under color of the laws, statutes, ordinances, regulations and customs of the State of Florida and of the municipality of Miami in said State creating the office and position of police officer of the municipality of Miami, Florida, and creating the office and position of special police officer of the municipality of Miami, Florida, subject and cause to be subjected Chester M. Robinson, an inhabitant of the State of Florida, to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said Chester
7 M. Robinson and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, Florida, and did there detain the said Chester M. Robinson, and while he was so detained the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said Chester M. Robinson in order illegally to coerce and force the said Chester M. Robinson to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co., and in order il-

legally to coerce and force the said Chester M. Robinson to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Chester M. Robinson.

That at the time and places aforesaid, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation, defendants herein, well knowing all of the premises aforesaid, did in the Miami Division of the Southern District of Florida and within the jurisdiction of this Court, wilfully aid and abet in the commission by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI and CHARLES R. FORD, of the offenses described in this count.

In violation of Section 52, Title 18, United States Code (1946 Ed.).

COUNT FIVE

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the
8 laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation, all of the above named persons being the defendants herein, conspired to injure, oppress, threaten and intimidate Henry W. Priest, a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right

and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that the said defendants would arrest and detain and cause to be arrested and detained on or about the 28th day of March, 1947, the said Henry W. Priest, and would cause the said Henry W. Priest to go to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, and that they would detain the said Henry W. Priest in said shack and, while the said Henry W. Priest was so detained, the said defendants would then and there illegally strike, bruise, batter, beat, assault and torture the said Henry W. Priest in order illegally to coerce and force the said Henry W. Priest to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Lindsley Lumber Co., and in order illegally to coerce and force the said Henry W. Priest to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of the said Lindsley Lumber Co.,

9 and for the purpose of imposing illegal summary punishment upon the said Henry W. Priest; that the said conspiracy was formulated and entered into by the defendant, CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, while acting in their official capacities as aforesaid.

In violation of Section 51, Title 18, United States Code (1946 Ed.).

COUNT SIX

On or about the 28th day of March, A. D. 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations

of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of police officer and prescribing the duties of said office and position, defendants herein, did wilfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami in said State creating the office and position of police officer of the municipality of Miami, Florida, and creating the office and position of special police officer of the municipality of Miami, Florida, subject and cause to be subjected Henry W. Priest, an inhabitant of the State of Florida, to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of laws and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said Henry W. Priest and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, Florida, and did there detain the said Henry W. Priest, and while he was so detained the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said Henry W. Priest in order illegally to coerce and force the said Henry W. Priest to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co., and in order to illegally coerce and force the said Henry W. Priest to name and accuse

other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Henry W. Priest.

That at the time and places aforesaid, ANDREW J. YUHAS and Lindsley Lumber Co., a corporation, defendants herein, well knowing all of the premises aforesaid, did in the Miami Division of the Southern District of Florida and within the jurisdiction of this Court, wilfully aid and abet in the commission by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI and CHARLES R. FORD, of the offenses described in this count.

In violation of Section 52, Title 18, United States Code (1946 Ed.).

11 COUNT SEVEN

On or about the 28th day of March, 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the municipality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami, Florida, creating the office and position of police officer and prescribing the duties of said office and position, and ANDREW J. YUHAS and LINDSLEY LUMBER CO., a corporation, all of the above named persons being the defendants herein, conspired to injure, oppress, threaten, and intimidate John P. Sturniolo, a citizen of the United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the

authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, it was the plan and purpose of said conspiracy that the said defendants would arrest and detain and cause to be arrested and detained on or
12 about the 28th day of March, 1947, the said John P. Sturniolo and would cause the said John P. Sturniolo to go to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, and that they would detain the said John P. Sturniolo in said shack and, while the said John P. Sturniolo was so detained, the said defendants would then and there illegally strike, bruise, batter, beat, assault, and torture the said John P. Sturniolo in order illegally to coerce and force the said John P. Sturniolo to make an admission and confession of his guilt in connection with the alleged theft of personal property alleged to be the property of the said Lindsley Lumber Co., and in order illegally to coerce and force the said John P. Sturniolo to name and accuse other persons as participants in alleged thefts of personal property alleged to be the property of said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said John P. Sturniolo; that the said conspiracy was formulated and entered into by the defendant, CHARLES R. FORD, while in the employ of the municipality of Miami, Florida, and while acting in his official capacity as aforesaid, and by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, while acting in their official capacities as aforesaid.

In violation of Section 51, Title 18, United States Code (1946 Ed.).

COUNT EIGHT

On or about the 28th day of March, A. D. 1947, in the Southern District of Florida and within the jurisdiction of this Court, JAY G. WILLIAMS, JOSEPH V. PERRY and JOHN S. BOMBACI, all being then and there special police officers under written authority from the Director of Public Safety of the City of Miami, Florida, acting under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami creating the office and position
13 of special police officer and prescribing the duties of said office and position, and CHARLES R. FORD, who was then and there a police officer employed by the munici-

pality of Miami, State of Florida, acting under the laws of the State of Florida, and the ordinances and regulations of the municipality of Miami creating the office and position of police officer and prescribing the duties of said office and position, defendants herein, did wilfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami in said State creating the office and position of police officer of the municipality of Miami, Florida, and creating the office and position of special police officer of the municipality of Miami, Florida, subject and cause to be subjected John P. Sturniolo, an inhabitant of the State of Florida, to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to-wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 29th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said John P. Sturniolo and brought and caused him to be brought to and into a certain building sometimes called a shack on the premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, Florida, and did there detain the said John P. Sturniolo, and while he was so detained the defendants did then and there
14 illegally strike, bruise, batter, beat, assault, and torture the said John P. Sturniolo in order illegally to coerce and force the said John P. Sturniolo to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co., and in order illegally to coerce and force the said John P. Sturniolo to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said John P. Sturniolo.

That at the time and places aforesaid, ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation, defendants herein, well knowing all of the premises aforesaid, did in the Miami Division of the Southern District of Florida and within the jursdiction of this Court, wilfully aid and abet in the commission by the defendants, JAY G. WILLIAMS, JOSEPH V. PERRY, JOHN S. BOMBACI, and CHARLES R. FORD, of the offenses described in this count.

In violation of Section 52, Title 18, United States Code (1946 Ed.).

A true Bill.

J. HOMER MERCER
*Foreman*

FRED BOTTS
*Asst. United States Attorney*

15 No. .....

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United States District Court
Southern District of Florida
Miami Division

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THE UNITED STATES OF AMERICA
vs.
JAY G. WILLIAMS; JOSEPH V. PERRY; JOHN S. BOMBACI; CHARLES R. FORD; ANDREW J. YUHAS and LINDSLEY LUMBER Co., a corporation

---

INDICTMENT

Vio: T 18 USC § 51 and § 52 (1946 Ed.)
Civil rights.

---

A true bill,

(s) J. HOMER MERCER
*Foreman*

---

Filed in open court this 15th day of November, A. D. 1948.

EDWIN R. WILLIAMS
*Clerk*
By EARLE F. SPRIGG
*Deputy Clerk*

Bail $.....

16 In United States District Court

*Minute Entries*

*Arraignment of Perry, et al.*

On December 31, 1948, the defendants, Joseph V. Perry, Charles R. Ford, Andrew J. Yuhas and Lindsley Lumber Company, a corporation, were each duly arraigned in open court and each entered a plea of not guilty to the indictment as reflected in the Court Minutes entered in Miami Minute Book 35, page 160, on the above date.

*Arraignment of Williams, et al.*

On January 17, 1949, the defendants Jay G. Williams and John S. Bombaci were each duly arraigned in open court and each entered a plea of not guilty to the indictment as reflected in the Court Minutes entered in Miami Minute Book 35, page 245, on the above date.

*Trial Commenced*

On January 17, 1949, the trial of this case before a Jury was commenced as to all defendants as reflected in Miami Minute Book 35, page 245, on the above date.

*Trial Resumed*

On January 18, 1949, the trial was resumed as reflected by the Court Minutes entered in Miami Minute Book 35, page 256, on the above date.

On January 19, 1949, the trial was resumed as reflected by the Court Minutes entered in Miami Minute Book 35, page 266, on the above date.

In United States District Court

*Motion by the Government to Amend the Indictment—Filed Jan. 19, 1949*

17 Comes now the plaintiff, United States of America, by its undersigned attorney, and moves the Court to enter an order amending said indictment and each and every count thereof severally in the following particulars:

By striking out of said indictment and each and every count thereof severally, wherever the same may appear therein, the words "Lindsley Lumber Co., a corporation," or the words "Lindsley Lumber Co.," and inserting in place of said words so stricken out in each place in said indictment and each count thereof severally where the same may be

stricken out, the words "Dania Supply Company, a corporation, doing business as Lindsley Lumber Co.," on the ground and for the reason that the undisputed evidence shows that the name "Lindsley Lumber Co." was a trade name used by Dania Supply Company, a corporation, in conducting its business; that said Dania Supply Company, a corporation, is in fact the defendant sought and intended to be described in said indictment, in each place where the designation "Lindsley Lumber Co." was used and that the use of the words "Lindsley Lumber Co." was a misnomer in a matter of form and not of substance.

FRED BOTTS
Fred Botts
*Assistant U. S. Attorney*

*Order*

On January 19, 1949, the above Motion was granted by the Court as reflected in the Court Minutes entered in Miami Minute Book 35, page 267.

On January 20, 1949, the trial was resumed as reflected by the Court Minutes entered in Miami Minute Book 35, page 271.

On January 21, 1949, the trial was resumed as reflected by the Court Minutes entered in Miami Minute Book 35, page 287.

18 In United States District Court

*Verdict of the Jury—Filed Jan. 21, 1949*

We, the Jury, find the defendant Jay G. Williams, Guilty of Counts 2, 4, 6 and 8
and the defendant, Joseph V. Perry, not guilty of Counts 2-4-6-8
and the defendant, John S. Bombaci, not guilty of Counts 2-4-6-8
and the defendant Charles R. Ford, not guilty of Counts 2-4-6-8
and the defendant Andrew J. Yuhas, not guilty of Counts 2-4-6-8
and the defendant, Dania Supply Company, a corporation, doing business as Lindsley Lumber Co., not guilty of Counts 2-4-6-8

So say we all.

M. L. BYRD
*Foreman*

We the Jury are unable to agree on Counts 1-3-5-7
So say we all.

M. L. Byrd

In United States District Court

*Motion for new Trial—Filed Jan. 24, 1949*

The defendant Jay G. Williams, by and through counsel, respectfully moves the court to set aside the verdict of "guilty" rendered against him by the jury, and to grant him a new trial, upon the following grounds:

1. The verdict is contrary to the law.
2. The verdict is contrary to the evidence.
3. The verdict is contrary to both the law and the evidence.
4. The verdict is unsupported by the law and the evidence.

19 5. For further grounds, defendant sets forth that the court erred in denying the motion of defendant for a directed verdict at the conclusion of the government's case.

6. The court erred in failing to grant the defendant's motion to dismiss, at the conclusion of the taking of all evidence, both by the government and the defense.

7. The Court erred in that its second and third instructions to the jury did not carry with it a re-statement in full, of the original charge; and the subsequent instructions and/or charge, were so dissociated from the original instructions and/or charge, as to be confusing and disconcerting.

8. The government in its proof, failed to substantiate the material allegations in the indictment.

9. The government failed to show by its testimony, that the defendant Jay G. Williams was guilty of depriving the complaining witnesses or any one of them of any constitutional right that they might have under the Federal Constitution, or either of its several amendments.

10. The court erred in sustaining objections to questions addressed to the witness McConnell.

11. The court erred in refusing to charge the jury as requested.

Wm. J. Pruitt
*Attorney for Defendant*
*Jay G. Williams*

*Judgment and Commitment—Filed Feb. 11, 1949*

20 D. C. Form No. 61a

JUDGMENT AND COMMITMENT

District Court of the United States

Southern District of Florida

UNITED STATES

v.

JAY G. WILLIAMS

No. 7279-M-Cr. Criminal[1] Indictment in eight counts for violation of U. S. C., Title 18 Secs. 51 & 52

On this 11th day of February, 1949, came the United States Attorney, and the defendant Jay G. Williams, appearing in proper person, and attended by his counsel, William J. Pruitt, Esq., and L. J. Cushman, Esq.

[2]The defendant having been convicted on[3] verdict of guilty of Cts. #2, #4, #6, & #8 and, of the offense charged in the[1] Indictment in the above-entitled cause, to wit:[4] wilfully under color of law, subjected and caused certain persons, inhabitants of the State of Florida, to deprivation of their rights, privileges and immunities secured to them and protected by the Fourteenth Amendment to the Constitution of the United States and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of[5] one year on each

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[1] Indictment or information.

[2] Insert (*a*) "by counsel" or (*b*) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable.

[3] Insert the words "his plea of guilty," "plea of nolo contedere," or "verdict of guilty," as the case may be.

[4] Name specific offense or offenses and specify counts upon which convicted.

[5] Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence.

of Counts 2, 4, 6, and 8, sentence on each Count to run consecutively.

IT IS FURTHER ORDERED that[6]

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[7]

(Signed) A. D. BARKSDALE
*United States District Judge*

The Court recommends commitment to[8]

A True Copy. Certified this ..... day of .....

(Signed) ..... (By) .....
*Clerk* *Deputy Clerk*

21 In United States District Court

*Notice of Appeal—Filed Feb. 14, 1949*

NAME AND ADDRESS OF APPELLANT:

JAY G. WILLIAMS, c/o 605 Pan American Bank Bldg., Miami 32, Florida.

NAME AND ADDRESS OF APPELLANT'S ATTORNEY:

WM. J. PRUITT, 605 Pan American Bank Bldg., Miami 32, Florida.

L. J. CUSHMAN, 411-15 Biscayne Bldg., Miami 32, Florida.

OFFENSE:

Violation of Section 52, Title 18, United States Code.

CONCISE STATEMENT OF JUDGMENT OR ORDER, GIVING DATE AND SENTENCE:

Judgment, guilty upon Counts two, four, six and eight of the indictment; Sentence, to be imprisoned one year upon each count, to run consecutively, in an institution designated by the Attorney General, no fine; judgment entered and sentence imposed February 11, 1949.

NAME OF INSTITUTION WHERE NOW CONFINED, IF NOT ON BAIL:

Not on bail; confined in the County Jail, Dade County, at Miami, Dade County, Florida.

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[6] Indicate any order with respect to suspension and probation.

[7] Certified copy to accompany defendant to institution.

[8] For use of Court wishing to recommend a particular institution.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit, from the above stated judgment.

Dated this 11th day of February, 1949.

WM. J. PRUITT
L. J. CUSHMAN
*Attorneys for Jay G. Williams, Appellant*

In United States District Court

*Election of J. G. Williams to Remain in Dade County Jail,—Filed Feb. 21, 1949*

22 In United States District Court

*Insolvency Affidavit—Filed March 3, 1949*

BEFORE ME, the undersigned authority, duly authorized to take oaths and acknowledgments, this day personally appeared Jay G. Williams, who, after being duly sworn, deposes and says: That he is the Defendant in the above entitled cause, and that he is a citizen and resident of the United States of America, and has no money or property, or stocks or bonds, or other assets with which to pay for any costs or expenses to be incurred herein for Court costs, Court stenographer fees, or expenses which may hereafter be incurred for the printing of any appeal record herein; that because of his poverty he is unable to pay any Court costs or expenses herein, or for the costs of printing the record of appeal in the future, or provide any security for the payment of any of said costs.

WHEREFORE, affiant requests that the Court allow an order permitting an appeal herein in form pauperis from the sentence and judgement of conviction herein.

JAY G. WILLIAMS

Subscribed and sworn to before me this 2nd day of March, 1949.

W. H. APPLEBY, JR.,
Notary Public, State of Florida at Large
My Commission Expires December 11, 1949.
Bonded by American Surety Co. of N. Y.

23 In United States District Court

*Motion for Leave to Proceed in Forma Pauperis—Filed March 3, 1949*

The Defendant, Jay G. Williams, in the above entitled cause, by his undersigned attorneys, hereby moves the Court for an order allowing the defendant to prosecute his appeal from the judgment of conviction herein, without being required to pay the costs of printing the record of said appeal or provide security for the payment of same.

WHEREFORE, Affiant requests that the Court make an order that the appeal proceed in *forma pauperis*, in accordance with the statute and the Federal Rules of Criminal Procedure, and that the Clerk transmit three copies of the transcript to the Circuit Court of Appeals, New Orleans, Louisiana, together with the original exhibits herein, and to that end the affidavit of Appellant is tendered herewith.

DATED at Miami, Florida, this 3rd day of March, A. D. 1949.

BART A. RILEY
A. C. DRESSLER
*Attorneys for Appellant,*

JAY G. WILLIAMS
1030 Seybold Building
Miami, Florida

In United States District Court

*Motion to Extend Time for Filing Record on Appeal—Filed March 3, 1949*

COMES NOW the Defendant, Jay G. Williams, by his undersigned attorneys, in the above entitled cause, Appellant herein to the Circuit Court of Appeals, Fifth Circuit, pursuant to notice of appeal heretofore filed in this cause under date of February 14, 1949, and shows unto the Court
24 that his original counsel who signed said notice of appeal, have recently withdrawn from his case, and that the undersigned counsel have filed their appearance as substituted counsel for Appellant, in the said Circuit Court of Appeals, and have likewise filed on March 3, 1949, motion of Appellant for leave to *proceeding forma pauperis*, with affidavit in *forma pauperis* being also filed and tendered with said motion; that the Court Reporter herein who took the shorthand notes of the trial proceedings is an

official court reporter of the United States District Court Office, located at Lynchburg, Virginia, and that said court reporter will not be able to prepare the complete stenographic transcript of all the testimony taken in the trial heretofore had in this cause, within the time the record on appeal should be docketed in the said Circuit Court of Appeals, as contemplated by Rule 73-G, and that such time for filing the record on appeal and docketing said action, be extended to and include the 14th day of May, 1949, which is a period of time not more than ninety (90) days from the date of the filing of the notice of appeal.

The Defendant further shows unto the Court that Rule 75-B of the Federal Rules of civil procedure requires Appellant to file with his designation of contents of the record on appeal, two (2) copies of the reporter's transcript of the evidence or proceedings included in his designation. Defendant desires to file a complete transcript of all the testimony taken at the trial, of all issues in this cause, and application is therefore made for an extension of time, within which two (2) copies of the reporter's transcript of the evidence and proceedings at said trial may be filed, together with designation of contents of record on appeal and statement of points, such extension of time to extend to and include the said 14th day of May, 1949.

BART A. RILEY
A. C. DRESSLER
*Attorneys for Defendant*
1030 Seybold Building
Miami, Florida

On March 4, 1949, Notice of Hearing was filed in this cause.

In United States District Court

*Order Extending Time for Filing Record on Appeal—Filed March 9, 1949*

THIS CAUSE coming on to be heard on the motion to extend time for filing record on appeal by the Defendant, Jay G. Eilliams on proper notice given to the Government, and the Court being advised in the premises,

IT IS ORDERED that the time for filing the record on appeal and docketing said action in the United States Circuit Court of Appeals in and for the Fifth Circuit, be extended

to, and include the 14th day of May, 1949, which is a period of time not more than ninety (90) days from the date of the filing of the notice of appeal.

DATED at Miami, Florida, this 9th day of March, 1949.

JOHN W. HOLLAND
*District Judge*

26 In United States District Court

*Order Permitting Appeal in Forma Pauperis—Filed March 9, 1949*

THIS CAUSE coming on to be heard on the motion and affidavit of the Defendant, Jay G. Williams, in the above entitled cause, on his motion and affidavit tendered therewith, to allow the appeal heretofore taken by said Defendant to proceed in *forma pauperis;* and after due notice to the Government of the presentation of this application to the Court, it is

ORDERED that the appeal of the Defendant, Jay G. Williams, be allowed to proceed in *forma pauperis* in accordance with the Statute, and the Official Court Reporter who took the shorthand notes of said trial proceedings shall transcribe five (5) copies of the transcript of the trial proceedings including the charges given by the Court, and the Clerk of this Court transmit three (3) copies of the transcript herein on appeal to the United States Circuit Court of Appeals at New Orleans, Louisiana, together with such original exhibits herein as may be designated by the parties hereto.

DATED at Miami, Florida, this 9th day of March, 1949.

JOHN W. HOLLAND
*District Judge*

27 In the District Court of the United States for the Southern District of Florida, Miami Division

UNITED STATES OF AMERICA
v.
JAY G. WILLIAMS, *et al*

7279-M-Cr.

(Jury)

*Transcript of Testimony and Proceedings*

Miami Florida
January 17-18, 1949

Before: HON. ALFRED D. BARKSDALE, *U. S. District Judge.*

APPEARANCES:

Fred A. Botts, Assistant U. S. Attorney, for the Government.

Messrs. Ernest Roberts and Edwin Strickland, (Roberts, Holland and Strickland) for the Defendants Andrew J. Yuhas and Lindsley Lumber Company.

William Pruitt, for the Defendant Jay G. Williams.

Ned M. Letts, for the Defendant John S. Bombaci.

L. J. Cushman, for the Defendant Charles R. Ford.

Messrs. Robert L. Floyd and Edward F. Boardman, for the Defendant Joseph V. Perry.

32 (Court was opened for the trial of this case at 9:30 o'clock, a. m.)

PROCEEDINGS:

The COURT: Are there any motions?

Mr. BOTTS: No, sir, but some of the defendants have not yet been arraigned, Williams and Bombaci.

The COURT: Let me make this observation. Gentlemen, it is my practice to do all the interrogation of the jury myself. I am told that a different practice prevails here. When the jury is called, I am going to ask them all the questions which seem to me to be important, but I will not insist on strick compliance with my practice. After I have finished, I will afford counsel an opportunity to ask questions that they and I think are pertinent. Let's proceed with the arraignments.

Mr. BOTTS: Will defendants Bombaci and Williams come up, please?

Jay G. Williams, how do you plead to this indictment?

Defendant WILLIAMS: Not guilty.

Mr. Botts: Mr. Bombaci, are you familiar with this indictment?

Defendant Bombaci: Yes, sir.

Mr. Botts: How do you plead?

Defendant Bombaci: Not guilty.

33 The Court: Will the defendants waive the formal reading of the indictment?

Mr. Pruitt: Yes, sir.

Mr. Letts: Yes, sir.

The Court: Let that be so noted.

(Whereupon, the jury was impaneled and sworn, and opening statements were made on behalf of the Plaintiff and the Defendants.)

The Court: Call the first witness.

Frank J. Purnell, Jr. was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Botts:

Q. State your name, please?

A. Frank J. Purnell, Jr.

Q. Where do you live, Mr. Purnell?

A. At the present, I am staying at 54 N. W. 34th Street.

Q. How are you employed at this time?

A. With the Miami Daily News, as street sales manager.

Q. Just indicate in general what your duties are.

A. I have about thirty news boys working for me, and I give them their papers three times a day and check

34 them in in the evenings.

Q. How long have you been in that employment?

A. About thirteen months.

Q. In March of 1947, how were you employed?

A. I was a salesman for Lindsley Lumber Company.

Q. When were you first employed by Lindsley Lumber Company?

A. I was first employed by Lindsley Lumber Company in June or July of 1946, as a laborer, in the yard.

Q. And how long did you remain doing that work?

A. I would say about three months, and then I was made a truck driver.

Q. And how long did you continue as a truck driver?

A. About three months more.

Q. And then what was your assignment?

A. I was a salesman inside the store.

Q. In what department?
A. In the retail lumber department.
Q. Will you, if you can, tell us the various lines of material handled by the Lindsley Lumber Company?
A. They handle almost a complete line of building supplies, including hardware and plumbing.
Q. Do they have more than one place of business?
A. Yes, sir.
Q. At which place of business were you employed?
35 A. The Alapata Yard. It is about 3813 N. W. 17th Avenue.
Q. In the City of Miami, Dade County, Florida?
A. Yes, sir.
Q. On or about March 25th of 1947, did you observe any unusual occurrences in the vicinity of that place of business?
A. About the first part of the week, Tuesday or Wednesday—I don't know exactly which—there was two plain clothes men that led a couple of the newer employees, they led them through the yard, inspecting the different lumber bins.
Mr. CUSHMAN: If your Honor please, I have no knowledge of what the District Attorney was inquiring about, and I move the Court to instruct the jury to disregard the question and answer, because it is not concerning anything charged in the indictment, and I suggest it is not proper.
The COURT: I overrule the motion. Proceed.

By Mr. BOTTS:
Q. Now then, on or about the 28th day of March, did anything unusual occur?
A. About four o'clock in the afternoon, I was called from the rear of the store by Mr. Sullivan, the hardware manager, and told to go with Mr. Yuhas, across the street. At the time, they had transferred me from the lumber
36 department to the hardware department, because they were training me to be an outside salesman.
Q. Do you know Mr. Yuhas?
A. Yes, sir.
Q. Is he in the court room at the present time?
A. Yes, sir.
Q. Will you point the gentleman out?
(Indicating)
Q. And who was it told you to see Mr. Yuhas?
A. Mr. Sullivan.
Q. And what was his capacity?

A. He was manager of the hardware department.

Q. Did you approach or go to see Mr. Yuhas?

A. I went up with Mr. Sullivan to the front of the store. Mr. Sullivan said Mr. Yuhas wanted me to go with him across the street.

Q. Go ahead and tell them what took place.

A. He went across the street, and I followed him, and instead of going into the office, he went on the north side of the office to this paint shed.

Q. Will you describe that building that you refer to as the paint shed?

A. It was a frame building, about ten or twelve
37 foot wide and about thirty foot long.

Q. Wood or concrete block?

A. It was frame wood.

Q. One or two stories?

A. One story.

Q. Any windows in it?

A. Yes, sir, there was windows in it.

Q. Do you know for what legitimate purpose that shed was customarily used?

A. The sign painting department used it for storing paints, etc.

Q. You mean signs advertising their business or advertising particular articles?

A. Yes, sir.

Q. Little display signs?

A. Yes, sir.

Q. Who accompanied you to that structure?

A. Mr. Yuhas.

Q. Where did Mr. Sullivan—what became of him?

A. He stayed back in the store.

Q. About what time of the day, as near as you can recall, was it when you and Mr. Yuhas approached that shed or structure?

A. About four o'clock in the afternoon.

Q. Of March 28?

38 A. Of March 28, 1947.

Q. State what transpired when you reached the paint shed.

A. Mr. Yuhas knocked on the door; it seemed to be locked. It was opened from the inside, and he motioned me to go in ahead of him, which I did.

Q. Did Mr. Yuhas follow you into the building?

A. Yes, sir.

Q. You have described this as a shed. I will ask you if it was a shed or a walled room, with walls all around it.

A. It was divided into two compartments. There was a small partition near the rear of the shed.

Q. A shed is sometimes referred to as a structure with a roof and no walls. Did this have walls?

A. Yes, sir, this had walls.

Q. When you entered this room, this paint shop, were any other persons in there?

A. Yes, sir.

Q. Can you identify in the court room any of the persons whom you saw in that room that day?

A. Yes, sir.

Q. Will you step down here in front of the counsel table and designate such of the defendants, if any, as you observed in that place?

A. (Witness indicates.) There is one missing.

39 Q. Do you know at this time the name of the man who is missing?

A. I—

The Court: I couldn't see whom he designated. Will you state from here which ones they were?

The Witness: The gentleman on the right, the other gentleman, and those five men seated together there.

The Court: I understood you to say Mr. Yuhas went in with you?

The Witness: Yes, sir.

The Court: And when you and he went in, the other four gentlemen who sit there were already in there?

The Witness: Yes, sir.

Mr. Botts: There were only three others he identified—Mr. Bombaci, Mr. Perry and Mr. Williams, and Mr. Ford.

The Court: Well, that is four.

Mr. Botts: I am asking Mr. Giroux to be brought to the door of the court room.

The Court: All right. Go ahead.

By Mr. Botts:

Q. Will you state how the inside of that structure was furnished or arranged? What if anything particularly was in there?

A. The only thing I was conscious of was a chair

40 seated in the middle of the room with a light over it.

Q. Was that an ordinary electric light?

A. It was a lamp of some sort.

Q. Was it of any particular arrangement?

A. It was focused over the chair.

Q. Do you know whether it was bright, dim or what?

A. It was bright.

Q. Do you know whether it was an ordinary electric bulb, or was it of some other character?

A. I didn't pay that much attention to it. If it was, it was about a 100-watt bulb.

Q. Will you look at the gentleman—step up to the rail here please, sir. I will ask you if you recognize that gentleman?

A. Yes, sir, he was in there.

Q. He was the other occupant of the room?

A. Yes, sir.

Q. Were there other—you said there was a chair underneath that light. Were there other chairs in the room?

A. I didn't notice any, no, sir.

Q. Was there a desk in the room?

A. There was a table on the other side of the lamp.

Q. Did you notice whether these defendants, except Mr. Giroux, were seated or standing?

A. No, sir. There was only one seated. That was
41 Mr. Giroux. He was seated at the table.

Q. Will you state, without the necessity of questioning, will you state what took place when you went in there?

A. When I first was ushered in, one of the gentlemen, I couldn't tell who—it wasn't Mr. Giroux—flashed a wallet and said, "Here is my identification." It had a stamped emblem of some sort on the wallet. I assume they were officers.

Mr. Cushman: May I request the Court to strike the witness's statement of his assumption, and ask the jury to disregard it?

The Court: All right. Disregard it, gentlemen.

The Witness: So they motioned for me to be seated in this chair, which I did.

The Court: You said some gentleman showed you a wallet and some kind of a badge. Did you say who did that?

The Witness: No, sir.

Mr. Botts: Do you know now which one it was?

The Witness: No, sir. So I was seated in the chair—

Mr. Cushman: He said, however, he was sure it was not Giroux.

The Witness: Yes, sir.

By Mr. Botts:

42 Q. Go on, Mr. Purnell.

A. So I was seated in the chair, and they started to question me. It seemed like all of them at once would ask me questions; things of a personal nature—my name and age, and where I was born—things of that nature. There was a pause, and they asked me to empty my pockets, which I did.

Q. What did you have in them?

A. I had my wallet and a handkerchief and a comb, and automobile keys. So while they were questioning me—

Q. Where were these articles placed?

A. On the table. They continued questioning me along a personal nature, and then out of a clear sky, one of the men, Mr. Williams, he says, "We want to know about this lumber you have been stealing." I denied I had been stealing any lumber, and it seemed like one would ask me a question, and before I had a chance to answer, another one would ask me a question. Mr. Giroux picked up a pad and read from it. It was supposed to be a statement dictated by Mr. Priest saying he had helped me steal some lumber, and took it out to my house. And I told them Mr. Priest didn't even know where I lived. All of a sudden, Mr. Williams hit me in the face from backwards and knocked me out of the chair, with his forearm, and he jerked me to my feet, and I was against the wall, and he stepped back and said, "Come on, fight me."

43 There was five or six men in the room, and—

Q. Will you indicate his posture or gestures when he invited you to fight him?

A. He danced around like a prize fighter, and he says, "Come on, fight me." By then I was so frightened, I didn't dare move a finger. I didn't want to make any wrong move. I told him no, I didn't want to fight him. And he struck me in the stomach with his fist. And when I doubled from the blow, he back handed me across the neck, and I fell to the floor. How long I lay there I don't know, but I remember being helped back up and seated in a chair.

Q. While you were laying on the floor, were you subjected to any blows?

A. I don't know. I don't recall. I was in a semi-dazed condition from the blow on the back of the neck. They re-seated me, and the third gentleman from the left, he had a dowel stick. It is a stick that is used—

Mr. Floyd: If your Honor please, we request that he identify these men by name.

The WITNESS: The only three I know are Yuhas, Ford and Williams. The others, I don't know their names.

Mr. BOTTS: The one who had the dowel stick, will you point out which one it was?

The WITNESS: This one. (Indicating.)

Mr. BOTTS: Is it conceded that that is Mr. Bombaci?

44 Mr. CUSHMAN: Yes.

Mr. BOTTS: And this gentleman, (indicating), is it conceded that that is Mr. Perry?

Mr. CUSHMAN: Yes.

By Mr. BOTTS:

Q. You use those names where appropriate. How long was this dowel stick they used?

A. They are usually thirty-six inches long. That is standard, I believe, on them.

Q. And what did Mr. Bombaci—how did he use this?

A. All the time Mr. Williams and some of the other men would question me, he would punctuate their questions by flicking me across the back or thighs with it.

Q. Did he strike you a severe or light blow?

A. I was in a dazed condition. It would be hard to tell. You could feel it.

Q. Was your body stung by it?

A. It would sting, yes, sir.

Q. In these questions, who took the lead in the questioning, so far as you can recall?

A. Mr. Williams.

Q. I will ask you in addressing you, if they used any out-of-the-ordinary terms or appellations; called you by any names?

A. Yes, sir.

Q. What names were used?

45 A. Later on in the questioning—at first they—

Mr. FLOYD: We would again like to have the witness definitely say who "They" are.

The COURT: All right. Don't say "They" did so and so. Identify each by their names.

The WITNESS: Mr. Williams used names, mostly.

By Mr. BOTTS:

Q. What was the name?

A. Later on in the questioning when it got rough, he would call me "Mr. Son-of-a-bitch", and stuff like that. That is the one that stuck out in my memory the most. He used other profanity.

Q. Did he use any term indicative of his belief or disbelief of what you were stating?

A. Yes, sir. Every time I would answer, he would say, "You are lying. You are a liar."

Q. Go ahead. You have stated that up until that time, it hadn't gotten rough.

A. I meant at the beginning, when they questioned me, before they started beating me around.

Q. Go ahead and complete your story as to what occurred there, and may I suggest, in doing so, if they used any of these derogatory terms, so indicate, so it will be unnecessary for me to question you.

A. After they picked me up and seated me in a
46 chair, they started firing questions at me, and it was impossible to answer. They wouldn't give you time; somebody else would interrupt. Mr. Williams was taking the lead, and somebody from your back or left would interrupt before you could answer. They kept on for about five or ten minutes, and then I was hit across the shoulder—not by Mr. Williams, but from the back—across the shoulder with a blunt instrument. It paralyzed it for a minute, and while I was struggling with my shoulder, I was knocked backwards out of the chair again by Mr. Williams.

Q. What did he knock you with?

A. With the back of his arm.

Q. What part of your person was struck?

A. Usually around the shoulder. And when I hit the floor he would pick me up and slap me several times.

By that time I was so afraid and taking such punishment, I agreed to confess. They read from the statement while I wrote. I wrote what Priest had accused me of doing.

Q. Who told you Priest had accused you of doing that?

A. Mr. Williams and Mr. Giroux.

Q. And what did you say at that point?

A. At first I denied it.

Q. But later, after you had been subjected to this treatment?

A. I would agree to anything to get them to let me
47 alone. So they handed me a pad and dictated what they wanted me to write, and I wrote it.

Q. Those things that you wrote, were they true?

A. No, sir.

Q. Go ahead and state how long this incident took place. How long did they keep you in there and subject you to the treatment which you have described?

A. After I wrote the statement, why they threatened me several times after that.

Q. Don't use the word "threatened" because that is not indicative of what they said. If you will use the words.

A. After I wrote the statement, Mr. Williams read it, and he didn't seem satisfied with it. He seemed to want me to name people that worked for the lumber company, which I didn't know. I tried to explain it, and he said they ought to work over me some more. He said they had worked twenty-four hours on Priest and they were prepared to work on me that long. So they put handcuffs on me.

Q. Who did?

A. Mr. Williams. And led me outside of the shed and put me in the back seat of a car that was parked by the shed and by the clock on the dashboard—I happened to notice that—it said about five or ten minutes to six.

Q. What portion of that time were you being physically abused, and during what portion were you being
48 questioned?

A. I would say about half the time.

Q. Could you approximate the number of times that you were struck while during that period of time?

A. The only times I remember were the first few licks when they hurt the worst, and then how many times Mr. Bombaci flicked me with the dowell stick, I do not know.

Q. You have referred to some other instrument that was used there, that someone struck you from the rear. Did you ever see that instrument?

A. No, sir. I supposed I did, because they had some shotguns and pistols laying on the table, and some black jacks, but I couldn't identify the instrument. Not specifically.

Q. How many times were you struck with a fist or hand or arm?

A. I was struck with his fist once that I remember, and I was slapped several times. The number of times I don't know.

Q. Did any other of these men present strike you, except Mr. Williams and Mr. Bombaci?

A. Those are the only ones I could positively state hit me.

Q. Now then, at the time when you were struck from the rear by some instrument, do you know whether at that time Mr.—you stated Mr. Williams was in front of you. Do you know whether at that time Mr. Bombaci
49 had the dowell pin in his hand?

A. I believe he did, yes, sir.

Q. Was it Mr. Williams or Mr. Bombaci that struck you from the rear on that occasion?

A. No, sir.

Q. And you don't know who it was?

A. No, sir.

Q. When you were taken out to the car, you say you were handcuffed. Were you secured in any way in this automobile where they seated you?

A. No, sir. They put me in the backseat with my hands handcuffed in front of me.

Q. During the course of that conversation or that interview, whatever you want to call it, did Mr. Williams give you any instructions as to what he wanted you to do with reference to securing information, or anything of that kind?

A. No, sir. Not at that time.

Q. Was there a second interview?

A. Yes, sir.

Q. How long did you stay in the automobile?

A. I was in the automobile about an hour and fifteen or twenty minutes.

Q. Then what was done with you?

A. I was brought back in the shed.

50 Q. And what took place that second time?

A. In comparison with the first interview, it was a mild interview, and Mr. Williams didn't stay very long. And him and Ford and Perry and Bombaci left—left me with Mr. Giroux and Mr. Yuhas.

Q. Go ahead. Did Mr. Williams at any time during that interview give any suggestions?

A. Not to me directly. When he left the shack he made the remark to Mr. Giroux that, "You had better have more information when I get back."

Q. When you were in the room with Mr. Yuhas and Mr. Giroux, what took place?

A. Mr. Giroux took the fatherly attitude and said I was a sucker for not telling more information, and said I was taking the rap for somebody else, and used the sympathy approach. I told him I had done everything they wanted me to do and why didn't they leave me alone. And he started questioning me about my work at the Lindsley Lumber Company and he had a check with Mr. Yuhas to see if that was right.

Q. How long did that second interview take?

A. I have no way of knowing, because it was dark, but it seemed like it was about an hour. And Mr. Williams

and the other gentlemen came back, so I was handcuffed again and led back out to a second car, and Mr. Sturniolo was handcuffed in the front seat of the first car I
51 was in the first time, and they handcuffed me to the steering post of the second car by my left hand.

Q. Did you see either Mr. Robinson or Mr. Priest there that day?

A. No, sir.

Q. When you were out handcuffed to the steering post of that automobile, did anyone go into the paint shop except the defendants here?

A. No, sir.

Q. What did you see happen, if anything, with Mr. Sturniolo?

A. He was handcuffed in the same position I was in the first car, and I saw the defendants going back and forth in the paint shed. I saw, in about fifteen or twenty minutes, Mr. Yuhas came out and he got something out of the glove compartment on a third car there. And I called him over to the car I was in, and I asked him would he please get word to my wife, because I was late from work and she would be worried. He said he would see what he could do. About ten minutes later, Mr. Ford and Mr. Williams came out and brought me and Mr. Sturniolo a Pepsi-Cola to drink, and a few minutes later they came back out and Mr. Williams took me behind the shed and he said they were going to turn me loose and said they wanted me to go back to work and spy on the other employees. Naturally
52 if I was going to be turned loose, I agreed to do anything. He said, "You can go now". And I said, "What about my wallet and car keys?" And he said, "I will get them." And he went in to get them. While we were out there, I heard signs of a struggle going on inside, and he said, "Purnell, you understand about—

Mr. CUSHMAN: We object to the statements of anyone not in the presence of any of the defendants.

The COURT: Overruled. Who said this?

The WITNESS: Ford. He said, "Purnell, you understand innocent men get mixed up sometimes, don't you?" I was in an agreeable mood after being beaten up, and I said, "Yes." He said, "This Robinson inside there. We caught him stealing stuff off the yard," and he said, "He is being stubborn and we have got to use methods to get him to admit it." Mr. Williams came back out then, and he still didn't have my wallet.

By Mr. Botts:

Q. It was during that time that you heard sounds in the building?

A. Yes, sir.

Q. What did those—what was the general character of the sounds you heard?

A. There was shouting and thumps like somebody scuffing.

Q. Go on.

53 A. Ford reminded Williams he still didn't have my personal effects, and he went and got them, and they let me go. And I got in my car, which was parked across the street in an empty lot, and I went up 17th Avenue, and there was a filling station with a clock in the window, and I noticed the time, and it was just about ten o'clock. And I went home, and I went in the house, and my wife, she was worried.

Q. What was your condition when you reached home?

A. I was filthy. My shirt was torn and I was just dirty all over.

Q. Your physical and mental condition?

A. I was in a highly excited state.

Q. I will ask you whether or not anyone—did you exhibit your person to any individual or individuals that evening?

A. Not right at that time, no, sir.

Q. Go ahead and state, without stating conversations, state what took place and whether anyone saw you, etc.

A. I went in the house and my wife was there, and she wanted to talk to me, and I wouldn't. So I changed clothes and cleaned up, and told her to get in the car with me, that we were going downtown. And on the way downtown I told her what had happened. And I went down to the F. B. I. office and went upstairs: it must have been around eleven o'clock. And I explained to the night duty man that I had been roughed up. And he said there was

54 nothing he could do until we reported to the police department.

So I went over to the police department and asked them if they were working on a case out at Lindsley's, and one of the men said that must be the Continental Detective Agency; they didn't seem to want to be bothered and said I had better attend to my own business. So I left, and I went over to my mother's house.

Q. What is her name?

A. Mrs. Frank Purnell, Sr. I went by her house, and

she got all excited and insisted on getting my brother-in-law and my sister.

Mr. CUSHMAN: May I object to this line of testimony on the grounds that it cannot have—

The COURT: Overruled.

The WITNESS: We went home, and that was about all.

By Mr. BOTTS:

Q. Did anyone examine your body at any time to see whether or not there was any marks of any kind or bruises?

A. Yes, sir—my mother and my wife and my brother-in-law.

Q. Your wife is Mrs. Frank Purnell, Jr., or Mabel Allen Purnell?

A. Yes, sir.

Q. And who was the other person that examined you?

A. My brother-in-law, Mr. Lannon.

55 Q. Did you consult a physician?

A. The next morning.

Q. What was the name of that physician?

A. Dr. Putnam.

Q. Where were you when your wife examined your person and will you tell the nature of her examination in each instance?

A. It was after I had been downtown and I was disrobing to go to bed, and my wife was in the room.

Q. Were you able, on the portion of your body that you could observe, to see any bruises?

A. No, sir, except on my wrist.

Q. I will ask you whether or not your back were sore and the portions of your body you can't see and had the feeling of many bruises?

A. Not that night.

Q. Did tender spots come later?

A. Yes, sir. My shoulder pained me for several weeks and I had pains in my arm.

Q. When did you exhibit your person to your wife for her examination?

A. That evening.

Q. And your mother?

A. That evening.

Q. Where did each of these examinations take place?

56 A. In my bedroom.

Q. Both your mother and your wife was present?

A. My wife was present at first, and she called my mother.

Q. When did your brother-in-law come in?
A. Approximately the same time my mother did.
Q. Were you completely disrobed at the time?
A. I believe I was just in my shorts.
Q. This injury to your left arm that you have described that was sore for several weeks. Can you tell the jury when you suffered that injury, if you can?
A. I suffered that during the first interview, when they struck me with a blunt instrument.
Q. Do you know what blows or series of blows caused that injury to your left arm and shoulder?
A. The blow with the blunt instrument.
Q. That you received from the rear?
A. Yes, sir.
Q. Were you struck more than one time with that instrument?
A. Not that I recall, no, sir.
Q. By what designation was Mr. Williams indicated, other than by his name, if any?
A. The other men referred to him as the "Chief".

Mr. Botts: You may examine.

57 Cross Examination.

By Mr. Cushman:

Q. Mr. Purnell, you had some photographs taken the following day, did you not, on March 29, 1947?
A. Yes, sir.
Q. What time of the day, please, sir?
A. Sometime in the afternoon, sir.
Q. Sometime in the afternoon of March 29, 1947?
A. Yes, sir.
Q. Is this a photograph of yourself taken at that time?
A. That is one of them, yes, sir.
Q. How many did you have taken?
A. Four or five.
Q. Four or five different poses?
A. Yes, sir.
Q. As a matter of fact, when I talked to you about this matter once before, didn't you tell me you only had two photographs taken?
A. No, sir.
Q. Didn't you furnish me with a copy of each one?
A. I didn't, no, sir.
Q. Your attorney did?
A. Not at the time, he didn't furnish you with it. No, sir.

58 Q. The photograph I showed you is one of the photographs of you that was taken, is it not?

A. Yes, sir.

Mr. CUSHMAN: I would like to have that marked for identification as Exhibit 1 for the Defendant Ford.

(The document above-referred to was marked Defendant Ford's Exhibit No. 1 for identification.)

By Mr. CUSHMAN:

Q. You have the other photographs?

A. My attorney has them.

Q. You have pending now in the Circuit Court of Dade County a suit for $100,000 damages, do you not?

A. Yes, sir.

Mr. BOTTS: Objected to as immaterial.

The COURT: I overrule the objection.

By Mr. CUSHMAN:

Q. When was the first time, if you will, please sir, when you ever saw any of the men you have identified here today? Give me the date and the hour, if you can.

A. I saw two of the gentlemen on a Tuesday or Wednesday of that week. That was Mr. Williams and Mr. Perry, next to him.

Q. Did you have any conversation with either one of them at that time?

A. No, sir.

59 Q. When was the first time after that that you saw any one of those men you have identified?

A. On Friday, the 28th.

Q. At what hour of the day?

A. Around four o'clock.

Q. What time of the day did you ordinarily quit work?

A. Six o'clock.

Q. So that it is your testimony that it was about two hours before your regular quitting time, is that correct?

A. Yes, sir.

Q. When you say you went across the street with Mr. Yuhas, did you go over there voluntarily?

A. Yes, sir.

Q. You entered the paint shed voluntarily?

A. Yes, sir.

Q. You say you remained in the paint shed from four o'clock in the afternoon until five or ten minutes of six?

A. Yes, sir.

Q. When you got to the paint shed, did anyone undertake to introduce themselves to you by name?

A. No, sir.

Q. So that no one said to you, "My name is Williams, or my name is Perry, Bombaci," or anyone else, is that correct?

A. That is correct.

60 Q. When was the first time you ever found out the name of anybody that had been in the shed that afternoon? Give me the date.

A. March 29.

Q. That was the first time you found out the names of anyone?

A. Yes, sir.

Q. What time of the day was it?

A. In the afternoon.

Q. Did you see any of them at that time or not?

A. No, sir.

Q. You say you were in the paint shed from four, to five or ten minutes of six, and you were taken out and put in the car. How long did you remain in the car?

A. For an hour and fifteen or twenty minutes.

Q. During that time, how far were you from the street?

A. About forty to fifty feet.

Q. Was it daylight?

A. Yes, sir.

Q. You could see people going to and fro on the sidewalk I suppose?

A. Yes, sir.

Q. Were the street lights, or the lights in the stores along the street lit?

A. I don't believe it was necessary at that time.

61 Q. Still daylight sufficiently so it wasn't necessary?

A. Yes, sir.

Q. After you had been out in the car an hour and fifteen or twenty minutes, you were taken back into the paint shed?

A. Yes, sir.

Q. While you were out there in the car, did you see Robinson?

A. No, sir.

Q. Did you see Priest?

A. No, sir.

Q. Did you see Sturniolo?

A. No, sir.

Q. You were acquainted with all of those men, were you not?

A. Yes, sir.
Q. You knew them by name, or sight, at least?
A. Yes, sir.
Q. When you were taken back in after being out there for an hour and a quarter, how long did you remain in the paint shed the next time?
A. I would say about an hour and a half, or an hour and forty-five minutes.
Q. Then where did you go?
A. They took me to the second car.
62 Q. And how long did you remain there?
A. It must have been about a half hour or so.
Q. And at that time did you see Robinson?
A. No, sir.
Q. Priest?
A. No, sir.
Q. Did you see Sturniolo?
A. Yes, sir.
Q. Did you talk to Sturniolo?
A. No, sir.
Q. Were you conscious?
A. Yes, sir.
Q. Your eyesight was all right?
A. As far as I know it was.
Q. You had no complaint about that?
A. That is right.
Q. And how long did you remain out there that time?
A. About half an hour or forty-five minutes.
Q. And then were you taken back into the paint shed?
A. No, sir, I was turned loose.
Q. When you were turned loose, did you have any blood on your head, face or body?
A. None that I know of.
Q. Were you in any pain at that time?
A. Not at that time, no, sir.
63 Q. You were perfectly conscious, were you?
A. I was conscious.
Q. You were able to recognize the scenes about you?
A. Yes, sir.
Q. You knew who you were talking to?
A. Yes, sir.
Q. You say you went down the street and saw the hour by a clock at a filling station?
A. Yes, sir.
Q. And what time did you say it was?
A. It was a few minutes before ten.

Q. Before ten o'clock in the evening?
A. Yes, sir.
Q. And from there, you say you went home?
A. Yes, sir.
Q. What time the following day was it you consulted a doctor?
A. Right around noon.
Q. How long was it that you consulted a doctor, before you had the photograph, Defendant's Exhibit No. 1 taken?
A. That was about three or four hours.
Q. Before you had the picture taken?
A. Yes, sir.
Q. You never went to a hospital, did you?
A. No, sir.
64 Q. Did you have any medical attention that morning?
A. No, sir.
Q. Nor since?
A. I had a couple of visits with doctors.
Q. How long after the 29th of March that you went to the doctor?
A. I went up the following week after, and the week after that. I don't remember the exact dates.
Q. Is that Dr. Putnam?
A. Yes, sir.
Q. How far was the car you say you were in. How far was that from the street in feet?
A. Which car? I was in two.
Q. Let's talk about the first time.
A. I would judge about fifty feet from the street.
Q. And the second time?
A. It was maybe ten feet closer to the street.
Q. You didn't make any out-cry while you were in the car on either occasion, did you?
A. No, sir.
Q. Is that right?
A. Yes, sir.
Q. And how far was the shed from the street?
A. It must have been about fifty-five or sixty feet from the street.
65 Q. Referring to the description of the shed, was there any windows in the shed low enough down to the ground so anyone could see in the shed from the outside?
A. No, I don't believe there was. The shed sat up about three feet from the ground.

Q. All the windows were too high to see from the outside ground?

A. Yes, sir.

Mr. CUSHMAN: That is all.

The COURT: Did you have the photograph marked or offered in evidence?

Mr. CUSHMAN: I will do it now.

(Defendant Ford's Exhibit No. 1 received in evidence.)

Re-direct Examination.

By Mr. BOTTS:

Q. During the time you were in there were any of these people ever referred to by name?

A. I don't recall.

Q. When Mr. Ford talked to you, did he identify himself and his business?

A. When they were getting ready to turn me loose, he told me they were working out of the capitol on the theft of some building materials.

Q. Did he identify himself as a Miami police officer?

A. No, sir.

66 Mr. BOTTS: That is all.

Re-cross Examination.

By Mr. CUSHMAN:

Q. This suit I referred to was a suit for damages against the Dania Lumber and Supply Company, is that correct?

A. I believe that is correct.

By Mr. FLOYD:

Q. You referred to Mr. Williams and Mr. Perry on March 25. At that time, did Mr. Perry talk to you at all?

A. No, sir.

Q. Did you talk to Mr. Perry?

A. No, sir.

Q. You mentioned that someone showed you a badge as you entered the shack or paint shed.

A. It was a wallet with an emblem of some sort on it.

Q. Why were you so sure it was not Giroux?

A. I am not positive it was not him, but I have an impression that he was at the desk.

Q. Do you remember making the statement it was not Giroux?

A. Yes. In my mind I have him pictured as being at the desk, when I came in.

Mr. FLOYD: That is all.

The Court: I am going to adjourn for lunch now.
67 (Witness excused.)
The Court: Gentlemen of the jury, I admonish you not to discuss the case among yourselves, and more important, do not allow anyone to discuss it with you.
We will adjourn until 2 o'clock.
(Whereupon, at 12:30 o'clock p. m., court was adjourned until 2 o'clock.)
68 After Recess
Mr. Botts: I would like to ask Mr. Purnell a few more questions, if your Honor please.
The Court: Call him.

Frank J. Purnell, Jr. resumed the stand, was examined and testified further as follows:

Re-direct Examination.

By Mr. Botts:
Q. You have stated Mr. Williams is in the court room. Has he changed any since this occurrence?
A. He has lost about fifty or sixty pounds, I would say.
Q. How many of these photographs did you deliver to Mr. Cushman?
A. It was my understanding he was going to get four or five.
Mr. Botts: I want to offer this second photograph produced by Mr. Cushman in evidence.
Mr. Cushman: No objection.
(The document above-referred to was marked Government's Exhibit No. 1 and received in evidence.)
Mr. Botts: That is all.

Re-cross Examination.

By Mr. Cushman:
69 Q. I understand your testimony to be that you were not beaten at all after you were taken back into the paint shed around seven or seven-thirty, is that correct?
A. Yes, sir.
Q. After you were taken into the paint shed, you stayed in there some little time and then you were taken back out to the car, and while you were out in the car you were not beaten?
A. No, sir.
Q. And then you were turned loose?
A. Yes, sir.

Q. If I understand your testimony, it is that you were not beaten except during the time that you were in the paint shed between four o'clock in the afternoon and five or ten minutes of six in the afternoon on March 28, 1947, is that correct?

A. Yes, sir.

Q. That is the only time you claim you were beaten? That is true, isn't it?

A. Yes, sir.

Q. Do you remember who you complained to over at the police station?

A. I don't know his name, no, sir.

Q. Did you ever consult the county solicitor of Dade County in the court house?

70 A. No, sir.

Q. Did you go to the sheriff's department in the court house?

A. No, sir.

Q. You never went to any justice of the peace and made an affidavit or swore out a warrant for anyone, did you?

A. No, sir.

Mr. CUSHMAN: No further questions.

(Witness excused.)

Mrs. FRANK J. PURNELL, JR. was called at a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. Your name is Mrs. Frank Purnell, Jr.?

A. It is.

Q. Do you remember an occasion on or about the 28th of March, 1947, when Mr. Purnell came home about ten o'clock in the evening or thereabouts, and indicated to you some unusual occurrence?

A. I do.

Q. Mrs. Purnell, did you go with Mr. Purnell when he drove downtown in that connection?

A. I did.

Q. To what place did you first go?

71 A. To the police station. We went to the F. B. I. office after we went to the police station.

Q. After that, where did you go?

A. We went to my mother-in-law's house.

Q. To Frank's mother's home.

A. That is right.

Q. And from there where did you go?

A. Back to my home.

Q. What is your best recollection about when you got back to your home that night?

A. It was after twelve o'clock when we reached his mother's home. And we lived a good ways out in the county. It must have been one or one-thirty.

Q. That night did you examine Mr. Purnell's back and upper portion of his body with respect to possible bruises or contusions?

A. I did.

Q. And will you state what you found in that connection?

A. His back was badly bruised across his shoulders. His back had black and blue marks which stayed for two or three days as I remember.

Q. On these exhibits, Government's Exhibit 1 and Defendant's Exhibit 1, can you observe two marks across the back?

72 A. Yes, sir.

Q. I will ask you if there were, at the time you examined him, other marks which are not visible on the photograph?

A. That is right. There was a bruise on the left shoulder.

Q. Place your hand on your shoulder about the spot.

A. About this point. (Indicating.)

Q. About the top of the left shoulder?

A. That is right.

Q. I will ask you whether or not the flesh or skin on his back showed any discoloration or indication of these injuries.

Mr. CUSHMAN: I respectfully suggest the witness has already given a description, and that counsel shouldn't lead the witness.

The COURT: I sustain the objection. I think it is leading.

By Mr. BOTTS:

Q. Will you describe in detail any visible marks, if any, which you observed on his back?

A. There were a few more than the photograph shows, black and blue marks on his back. And there was also marks on his wrists from the handcuffs.

Q. And there were marks on his back other than

73 those in the photograph?

A. Yes, sir. They were small and didn't photograph

Q. I will ask you if you made any observations with reference to his mental condition at that time?

A. I don't quite understand.

Q. Did he appear to be normal?

A. No, he wasn't. He has never been normal since this has happened. He was very excited and tore up ever since he came home that night, and he has had very bad headaches since this happened.

Mr. Botts: That is all.

Cross Examination.

By Mr. Cushman:

Q. Did you by any chance go with Mr. Purnell when the photograph, Defendant's Exhibit No. 1, and Government's Exhibit 1, were taken?

A. No, I did not.

Q. And you had been informed that he had a photograph taken on March 29, 1947?

A. I didn't know much about him having the photographs taken when he went in town until he came home and told me about them.

Q. At any rate, these two photographs are pictures of Mr. Purnell. There is no question about that?

A. That is right.

74 Mr. Cushman: I have no further questions.

(Witness excused.)

Mrs. Frank J. Purnell, Sr. was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Botts:

Q. State your name, please.

A. Mrs. Frank J. Purnell, Sr.

Q. Are you the mother of Frank Purnell, Jr., who was on the stand this morning?

A. I am.

Q. Do you remember the occasion on the night of March 28 or perhaps the morning of March 29, 1947, when your son and his wife came to your house, recounting some alleged incidents—certain alleged incidents?

A. I certainly do.

Q. Did you return to your son's home with your son and daughter that night?

A. I did, that morning.

Q. I will ask you if you made any examination of the person of your son, especially his back and shoulders?

A. I did.

Q. And what did you observe, if anything, with respect to the condition of his person?

75 A. There was welps on his back and there was a big lump on one of his shoulders. I think it was the left shoulder, and he was in a very dazed condition.

Q. This lump on his shoulder. By placing your hand there, will you indicate approximately where it was?

A. It was right along up in here. (Indicating.)

Q. Let the record show that the witness placed her hand about middleway between the end of the shoulder and the neck on the top of the left shoulder.

What was the character of that bruise on his shoulder?

A. He complained of his head.

Q. What was the condition that you could see with the eye?

A. I could see a raised up place there, about the size of an egg.

Q. On his back, you were describing his welps. What do you mean by that?

A. What I call a welp is when a child is whipped, it leaves raised places on it, where the skin was raised.

Q. Did you observe his back at any time after that morning?

A. Yes. His back became black and blue several days later.

Q. That morning the black and blue had not become apparent?

76 A. I was so excited and nervous, I didn't look at it any more.

Q. And several days later you saw it again?

A. Yes, when it was black and blue.

Q. Did those bruised places, were they an area such as your hand, or was it in some directional situation, or how did it appear?

A. It looked just like a bruise after a few days. I think there was three or more stripes.

Q. I show you Government's Exhibit 1 and can you—I call your attention to a couple of not very clear lines across on the lower left side of the back, perhaps ten inches below the shoulder.

A. They looked a lot worse than what that picture shows.

Q. I will ask you if in your best recollection there were marks other than those that were not made apparent by the photographs?

A. They looked a lot worse than that. They were black and blue several days later.

Q. Were there any marks that you saw which do not show up in the picture?

A. Yes, handcuff marks on both his wrists.

Q. Were there any marks on his back that do not show up in the picture?

77 A. The welps on his shoulder—I just remember the welps on his shoulder. I was so excited.

Mr. Botts: That is all.

Cross Examination.

By Mr. Cushman:

Q. What time of the night did you see Frank Purnell, Jr.?

A. Around midnight on the night of March 28.

Q. Where?

A. At my home.

Q. Did he come to your home?

A. He certainly did.

Q. How?

A. He came there crying—

Q. By what means did he come?

A. He came in his car.

Q. He was driving the car?

A. I couldn't tell you, because I was in bed asleep when he came.

Q. Did you go downtown with him?

A. I did.

Q. He drove the car downtown, did he not?

A. Yes.

Q. You went downtown with him, and I believe you said that—or did you tell us where you went when you

78 went downtown?

A. We went to 29th Street and North Miami Avenue to a drug store.

Q. And then where did you go?

A. We then went back home to my home, and then I got my car and trailed him to his home.

Q. You didn't go to any police station?

A. No, sir.

Q. When you had gone down to the drug store and then you trailed him home, I suppose Frank Purnell, Jr., was still driving his car?

A. Yes, because he was the only one in his family that could drive.

Q. How long did the lump the size of an egg stay on his shoulder?

A. Maybe a couple of weeks. I can't be exact, about it, but I would say a couple of weeks.

Q. What shoulder was that lump on, now please ma'am?

A. The left shoulder.

Q. You are talking about a hen egg now; not a bird's egg?

A. It was a good sized lump.

Q. Is that what you were talking about?

A. It was a good sized lump. I wouldn't want to be exact about the egg, on his shoulder.

79 Q. I believe your testimony was that you saw that lump on the left shoulder.

A. I am pretty sure it was on the left shoulder—yes.

Q. Do you care to think about it and see if you want to change your testimony?

A. No. I will say the left shoulder.

Q. You say you saw that on his left shoulder, when you saw him at midnight on March 28?

A. No, I saw it the next morning, about two o'clock in the morning.

Q. That was early in the morning of March 29?

A. That is right.

Q. Approximately two hours after you had first seen your son?

A. Yes. He stripped and showed it to me.

Q. You say it remained for several days?

A. It did.

Q. Would you say it remained there two or three days? Is that what you mean?

A. Yes.

Q. Did you see it the next day?

A. Yes.

Q. That would be the 30th of March?

A. No, the 29th of March. And I saw it on the 30th, too.

80 Q. And the 31st?

A. Yes. For two or three days I saw the lump on his shoulder.

Mr. CUSHMAN: Thank you, ma'am.

(Witness excused.)

Mr. Botts: This will be all with reference to the Purnell affair, except the witness Giroux. We go now into Counts three and four, the Robinson counts. Oh, I forgot. I have one more witness still on the Purnell affair. Mr. Lannon?

Billy Gene Lannon was called as a witness and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Botts:

Q. State your name, please.

A. Billy Gene Lannon.

Q. Mr. Lannon, I observe that you seem to have a little something the matter with your head, and can't talk very well. What is your trouble?

A. I had a wisdom tooth pulled.

Q. Will you do the best you can to speak up loud enough so everyone can hear.

On the night of March 28 or the morning of March 29, 1947, did you have occasion to observe Mr. Frank Purnell, Jr.?

81 A. Yes, sir.

Q. Are you related to him in any way?

A. I am his brother-in-law. I married his sister.

Q. At what place did you make that examination? Was it at his home or your home or his mother's home?

A. It was at his home.

Q. About what time of night?

A. I would say around two o'clock, something like that, in the morning.

Q. Did Mr. Purnell remove his shirt so you could examine his body?

A. Yes, sir. He was in bed then. He was laying down then.

Q. Tell us what you saw with reference to any marks on his body.

A. What I saw was marks under his left shoulder on his back.

Q. How far down to the back? We will say from his shoulder down to his waist. Was it middleway?

A. I would say it was above middleway from his waistline.

Q. Did those marks have a directional trend or was it just a bruise?

A. Well—

Mr. CUSHMAN: I object.

82 The COURT: I sustain the objection. Just ask him to describe it.

By Mr. BOYTS:

Q. Describe it.

A. What it looked like to me is bruises, more or less, like you would obtain if you had fallen against something or struck something.

Q. You say he was laying on his face in bed when you saw that?

A. He was on his side, kind of turned over.

Mr. BOYTS: That is all.

Cross Examination.

By Mr. CUSHMAN:

Q. You have told us what you observed, have you not, sir?

A. Yes, sir.

Mr. CUSHMAN: That is all.

Re-direct Examination.

By Mr. BOYTS:

Q. Did you see any marks on any other part of his person?

A. Yes, sir. I believe there was kind of a red mark across his shoulder right in here. (Indicating) His left side.

Q. With reference to his hands, did you observe those?

83 A. No, sir, I didn't see anything of his hands.

Mr. BOYTS: That is all.

(Witness excused.)

The COURT: Now you go to Counts Three and Four?

Mr. BOYTS: Yes, sir.

CHESTER ROBINSON was called as a witness and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOYTS:

Q. Is your name Chester M. Robinson?

A. Yes, sir.

Q. Where do you live?

A. 2140 N. W. 23rd Street.

Q. How are you presently employed?

A. Roof tile, a tile layer. Roofing work.

Q. How were you employed on March 28, 1947?
A. As a salesman for Lindsley Lumber Company.
Q. Which place of business?
A. 17th Avenue yard.
Q. That is about the 3800 block of 17th Avenue?
A. Yes, sir.
Q. When did you start working for them?
A. September, 1945.
Q. And what kind of work did you do at first?
84 A. Labor.
Q. And then when did you become a salesman?
A. Probably six months later.
Q. In what branch were you a salesman? Lumber, hardware, or what?
A. Both.
Q. I will ask you if anything unusual took place on March 28, 1947. I want to explain to you, you are not permitted to state conversations that took place when some one of the defendants were not present. So try and avoid anything of that kind.
The Court: When did anybody make that rule?
Mr. Botts: I mean conversations that took place between this person and someone not a defendant.
The Court: Excuse me. Go ahead.

By Mr. Botts:
Q. When you arrived home that night did anything unusual occur?
A. My sister told me—
Mr. Cushman: May I request that the answer be yes or no?
The Witness: Yes.

By Mr. Botts:
Q. What was it that was unusual that occurred, excluding conversations with persons not in the presence of
85 these defendants?
A. I don't understand.
Q. Approximately about eight o'clock that night, did anyone come to your home?
A. At eight o'clock, there was a knock on my door.
Q. Did you answer the door?
A. I answered the door.
Q. And who was there?
A. Three men.
Q. Do you know any of them now?
A. In the court room, you mean?

Q. Yes. Can you identify any of them as being men in the court room?

A. Yes, sir.

Q. The gentlemen leaning against the wall—start there and from there on, point out, if you can, any of them that came.

A. The first man, Mr. Ford, and the third man and the fourth man.

Q. Do you know Mr. Williams now?

A. The one I take to be Mr. Williams.

Q. He was not among those?

A. He was.

Q. Will you step down there and point to the men who came to your place? Place your hand on their shoulder.

86 A. Yes, sir.

Q. Let the record show he put his hand on Mr. Ford, Mr. Bombaci, and Mr. Perry.

What, if any, statement was made to you?

A. Mr. Perry asked if I was Robinson, and I said, "I am." And he reached in and took me by the arm and said, "You are going with us a little while." And I turned to my mother and sister and told them I would be back in a few minutes, and they marched me out and put me in the car and drove away.

Q. Where did you go?

A. To the home of John Sturniolo.

Q. What happened there?

A. Mr. Ford and Mr. Perry got out and went to his house, and the other man stayed with me.

Q. Then what happened?

A. They knocked on the door of Sturniolo's house and he came to the door, and they brought him out.

Mr. CUSHMAN: I would like to know who knocked on the door.

The WITNESS: I couldn't see.

By Mr. BOTTS:

Q. Who were the two men that went up to the door?

A. Mr. Ford went about half way and stopped, and the other man walked on to the door.

87 Q. Who was the other man?

A. Mr. Perry.

Q. Then Mr. Perry went up to the door?

A. Yes, sir.

Q. And when they returned to the car, who was with them?

A. John Sturniolo.

Q. Did he get in the car?

A. Yes, sir.

Q. From that point, where did you go?

A. We drove to the Lindsley Lumber Company at 17th Avenue and 38th Street.

Q. What is your best recollection about what time it would have been when you arrived at the place of business of Lindsley Lumber Company?

A. A few minutes after eight.

Q. Was there any particular place at the Lindsley Lumber Company plant to which you went?

A. The paint shack on the northwest corner of their lot in back of their office building.

Q. When you arrived at the paint shed, or paint shack as you call it, what transpired?

A. He was—they handcuffed Sturniolo to the steering wheel and took me inside.

Q. When you got inside, who was in there, if anyone, in addition to the three men with whom you went out there?

88

A. There was a man they called, "Chief."

Q. Do you see him in the court room?

A. Not to recognize, no, sir.

Q. Step down closer if you care to.

A. I believe it was this man here, but he was a lot heavier than he is now. (indicating)

Q. Let the record show he was pointing to Mr. Williams.

A. He was heavier then than he is now.

Q. How much heavier was he, in your best judgment?

A. A lot—I would say forty or fifty pounds.

Q. Was anyone else in there?

A. Mr. Yuhas.

Q. You knew Mr. Yuhas from your employment out there?

A. Yes, sir.

Q. And you knew him by name?

A. That is right.

Q. Describe what transpired when you got in there. Just tell us the entire sequence of events.

A. They—

Mr. CUSHMAN: May we request the Court to instruct the witness to use names instead of just "they"?

The Court: Yes. Try to be specific as to who did what and who said what. Don't say, "They." Say the individual.

I would like if you don't mind, to clear up something in my notes. Can you state again exactly who was in the paint shack when you got in there?

The Witness: Williams, Bombaci, Giroux, Perry, Yuhas, and a fellow salesman named Purnell, who was seated in a high, middle chair. And when I went in, "Chief" said to Bombaci to take Purnell out. And Purnell sat slumped in this chair. And Bombaci told him to get up three or four times. And Bombaci put an arm around him and picked him up and they walked out. They was gone maybe ten or fifteen minutes.

Q. Who was it that went out?

A. Williams and Bombaci.

Q. What transpired? Did anything transpire from the time Purnell went out until Williams and Bombaci came back?

A. No, sir. We just stood there.

Q. When Williams came back, take it up from that point and recount what transpired.

A. Williams told me to sit down in this chair that Purnell had been in, facing a red light on the wall, and he sat in front of me and started questioning me. He told me there was a bunch of racketeers, a bunch of racketeer contractors that were working with employees of Lindsley Lumber Company, and he wanted me to say who they were. He said, "You son-of-a-bitch, you know who they are. We have got the goods on you." He said, "We have followed every move you made for three weeks, but what we want to know is the names of these contractors, the fellows you have been doing crooked business with."

I told him I didn't know what he was talking about, that I had done no crooked business myself and I had seen none, and I said I thought if they had followed me for three weeks and I had done something wrong, that that shack wasn't the right place to bring me. And Bombaci struck me with his hand and I hit the floor. And they told me to get in the chair again, and I got up and sat down.

And then Chief Williams said, "Mr. Son-of-a-bitch, where did you get those new doors that are standing in your bedroom at home?" I said, "I got them from Lindsley Lumber Company, where I am employed." He said, "Where is your receipt?" And I said, "I don't know; I don't have it with me." He said, "How about the new bath

tub?" I said I got that from Lindsley Lumber Company. He said, "How much did you pay for it?" I said, "$15.00." He said, "$15.00 for a brand new bath tub?" I said, "It is a damaged tub, and they sold it to me for $15.00." I said, "You go check Lindsley's books and you will see." It had only been two or three weeks since I had bought them. And from then on for about two hours, I was on th floor, and up again, and being questioned.

Q. How did you get on the floor?

91 A. I was knocked on the floor. Bombaci would have his foot on the chair and I wouldn't answer right, and he would knock me on the floor and tell me to get up. One time Bombaci said, "Get up, you son-of-a-bitch." And Williams was on my foot and I couldn't get up. And I asked him if he wouldn't kick me in the right side anymore, because I had been operated on for appendicitis, and I pulled up my shirt to show it to him, and he leaned down to look at it, and kicked me again with the broad side of his foot, as near as possible on the scar of the appendicitis operation. I got up and sat down, and they asked me things I didn't know anything about. They would describe a car that had been driven into Lindsley's yard, and I would say, "I don't remember the car or the men." And they said, "You do, you son-of-a-bitch." And they kept roping me. Bombaci and Williams was in front of me most of the time. And Yuhas and Ford was to the right of me in the back. And they would hit me with flexible instruments that looked like hose but it felt solid. It looked about the size of a water hose but when it hit you, it felt solid.

Q. Were you able to observe whether or not it was a garden hose?

A. It was not a garden hose. It was the size of garden hose.

Q. Do you know what the outside of it was? What

92 material?

A. It looked like smooth black rubber.

Q. Go ahead. Who hit you with that?

A. I guess they all had them. They would ask me a question and I would tell them I didn't know—"I really don't know"—and one would hit me from the back and I would turn to look, and Williams had a rubber pad about this long and this wide (indicating) and he said, "You watch me, you son-of-a-bitch; you keep your face on me." And they would ask me something else and this man on this side would hit me, and he would hit me again. And I would

tell him I couldn't hear him, and he would say, "Can you hear me now, you son-of-a-bitch?" And it kept on for about two hours, and then they all went out to get a drink except Ford, and they were gone for about fifteen minutes. And while they were gone Ford said, "Fellow, you had better tell them something." And I said, "I don't know what to tell them. I don't know what they are talking about." And he said several times, "Fellow, you had better tell them something."

And they came back, and I told him before they came back, "They are about through with me, I guess." And he said, "They haven't even started on you." And when they came back, I said, "I guess it is about time I start talking." I said, "I guess I have held out long enough." And Williams said, "You are being smart now," and got out
93 a pad. I made up a bunch of names and addresses and told them they were men I worked with on the crooked business. And I said they would come in and I would let them take materials out, and they would come later and pay me off maybe half what the articles were worth. And I named a man, and they said, "What did he get?" And I said, "Ten thousand feet of siding," and Williams would say, "Mr. Son-of-a-bitch, I am hard of hearing," and I would say, "Thirty thousand feet of siding." And he would write that down.

And Yuhas would ask me, "How about windows?" And I said, "Twenty windows." Williams would pick up this thing and rope me from his side and say, "You forget, Mr. Son-of-a-bitch, I am hard of hearing." And I would say, "Fifty windows." It kept on that way for about an hour until they got what they wanted.

Q. Did they write it down?

A. Yes, sir.

Q. Did you ever sign any statement?

A. Yes, sir. After they were done writing, they said, "Who worked with you?" I said. "No one." I said, "I did it all by myself." And for about half an hour, they would rope and punch and jab and kick, and I would be on the floor and up and on the floor and up. And they seen I wasn't going to name anybody, and they said, "Who could if they would?" And they kept drilling that at me.
94 And I said, "Anybody could if they would." And they said, "We want names." And I said, "The shipping clerk—he could if he would. And Ben Buttrey, a driver—he could if he would. And one of the salesmen, he

could if he would." And I named everybody. I named everyone I could think of in the company. And that took about an hour, and they had me sign it.

Q. I will ask you this question. Was there a single word of truth in those statements you made?

A. Everything I told them was phony. It was made up.

Q. Why did you make those statements up?

A. The only reason was from what Ford told me, "Fellow, tell them something." And finally it got to me what he meant and I told them something. And after it was all over, we were headed out—

Q. Did this beating and abuse, did that have any relation to the things you told them?

A. I don't understand.

Q. What caused you to tell them these lies, that you say now were lies?

A. I had taken all I could take.

Q. All right. You started to say, "Just as we were going out"—something.

A. Everybody was filing out, Bombaci, Perry, and
95 Giroux, and the Chief backed me up—Williams backed me up into the corner.

Q. Why do you call him Chief?

A. That is what they called him. He had a half-inch dowell stick, and he jammed it in my chest here and backed me into the wall, and told me, "Mr. Son-of-a-bitch, if any of these names you have named are phony or if you ever take this to court, either me or one of my men will finish you, and finish you right."

Q. As near as you can recall, about what time was it when you left the paint shed?

A. They took me out to the car, unhandcuffed Sturniolo and handcuffed me to the steering wheel. I would say that was around midnight.

Q. How long did you stay there handcuffed to that steering post or steering wheel?

A. About two hours.

Q. And then what transpired? Where did you go?

A. They left me in the car and took Sturniolo in.

Q. Where was this car you were handcuffed to in relation to the shack? How far away?

A. They moved the car. When they came early in the evening they parked right at the back door. And later later they pulled it over and nosed it into the office building.

Q. When Sturniolo was in there and you were out
96 chained to the wheel, did you see or hear anything?

A. I could hear sounds but I couldn't hear any words. I could hear them yelling at him and I heard him pleading the same as I did to please stop kicking, or please stop this or that.

Mr. Floyd: I move to strike the testimony on the ground that it is purely a conclusion of the witness.

The Court: Objection overruled. Go ahead.

The Witness: And they had something over the windows to keep out the light, but I could see the shadows on the curtain of arms striking and hear Sturniolo yelling.

By Mr. Botts:

Q. Did you hear any sound other than the sound of voices? Do you understand what I mean?

A. No.

Q. When you would see this waving of arms, was that followed by any other sound by the sound of voices?

A. No. I couldn't hear anything.

Q. When you ultimately left the Lindsley Lumber Company, where did you go?

A. They took Sturniolo and I to the city jail, finger printed us and locked us up.

Q. Who was in the party taking you down there?

A. Williams, Bombaci and Ford. There was two cars, and Sturniolo and I were in the car, but Yuhas and
97 one other didn't go down.

Q. Were any of these men wearing uniforms at the time these occurrences took place?

A. No uniforms.

Q. When you got to the police station, were any of these men identified down there in connection with any police business?

A. Not that I know of. I didn't hear anything or I didn't pay any attention to anything. I was worked on so that I didn't listen to nothing and didn't want to hear anything. I remember them finger printing me and taking me up and locking me up.

Q. And locked you up?

A. Yes.

Q. After that—Friday, the 28th, is what day of the week if you know? The 28th in 1947. Do you know what day of the week it was?

A. Friday.

Q. Did you get word to anyone to come down to the jail?

A. While they were finger printing Sturniolo. I asked someone in there if I could use the telephone and I called

Ernest Sussman, my landlord, to get word to my sister that I was in the jail.

Q. Did anyone come down to see you in the jail as
98 a result of this telephone conversation?

A. Early Saturday morning, my sister and my cousin, Charles Perry, came down.

Q. Where were you at that time? Were you up on the 19th floor or where, in the jail?

A. The 16th, I believe.

Q. Did these people that came down there, did you see them?

A. Yes, sir.

Q. And did they see you?

A. Yes, sir.

Q. I will ask you whether or not at that time you removed your shirt or in any other way exhibited your body?

A. Yes, sir. I took my shirt off when my sister and cousin came and showed them my back and arms. And my sister reached through the bars and felt of the welts on my back.

Q. What is your sister's name?

A. Elsie Hannon.

Q. Is she here?

A. Yes.

Q. Could you with your hands feel these welts on your back?

A. Surely.

Q. Where were they?

99 A. They were mostly down starting in the middle of my back and coming around. And then this bruise here on my chest from the dowell stick was the size of a half dollar.

Q. Did those bruises later become discolored?

A. They were blue, yes, sir, for several days.

Q. How long did you remain incarcerated in the jail?

A. From early Saturday morning until Monday afternoon.

Q. Was Sturniolo in the same detention room in the jail that you were, or was he separated from you?

A. It was in the same block, maybe a couple of cells from me. It was the same block.

Q. You didn't have access to talk to each other?

A. No.

Mr. Botts: You may examine.

Cross Examination.

By Mr. CUSHMAN:

Q. I understand you to say that about eight o'clock in the evening of March 28, 1947, three men came out to your house and you gave us their names as Mr. Ford, Mr. Bombaci, and Mr. Perry. That is correct, isn't it?

A. That is right.

Q. I understood you to say that the first time that you claim that you ever saw anyone who you referred to as Jay G. Williams, was after you got down to the shed of the Lindsley Lumber Company, is that right?

100 A. Would you repeat the question, please?

(Question read by reporter.)

A. That is right.

Q. I understood you to say, in answer to a question, that when you went into the shed or paint shack, that when you got there, there were present in that room, Williams, Bombaci and Giroux, is that correct?

A. When we came down to the shop, they were all in there.

Q. Am I to understand that your testimony is that when you got down to the paint shack and when you entered the paint shack, Williams, Bombaci and Giroux were in the paint shack, and that Ford and Perry were there also, with you, and had come in with you?

A. Ford, Perry and Giroux, yes.

Q. What do you mean by Ford, Perry and Giroux, yes?

A. I—

Q. Yes, what?

A. Ford, Bombaci and Perry were the ones that came to my house. The ones I took to be Ford and Bombaci and Perry.

Q. You even came over here and pointed out someone. Are those whom you pointed out the ones you say came to your house?

A. When they came to my house it was dark, and those two men were both present.

101 Q. What two men?

A. Williams and Perry.

Q. At your house?

A. At that time Williams was a lot heavier. And outside of my house, I am possibly wrong on which one came to my door, but on Bombaci and Ford. I know they were there, but on Williams and Perry, Williams being heavier then, I may be wrong.

Q. You told us a few minutes ago when Mr. Botts was asking you about this, that Mr. Ford, Bombaci and Mr. Perry came to your house. You told me just a few minutes ago when I asked you the question again, that those were the ones. Are you telling me now that you want to change your testimony or not?

A. I would like to change one point.

Q. What do you want to change?

A. I would like to change that Williams was the one present at my door. The one they called "Chief" was the one that took me by the arm and led me out to the car.

Q. Who else was at your house?

A. Ford, Bombaci and Williams.

Q. Now you say Perry wasn't there, is that right?

A. That is right.

Q. When you got down to the paint shack and went into the paint shack, who was there?

102 A. Williams, Bombaci, Perry, Giroux, Ford, Yuhas and Purnell.

Q. You don't contend or claim that anybody beat you at any time before you say you went down to the paint shack, do you, Mr. Robinson?

A. No, sir.

Q. After you got down to the place on 17th Avenue, you didn't go into the paint shed right away, did you?

A. I did.

Q. You did?

A. Yes, sir.

Q. Tell me about what time of night it was when you entered the paint shed.

A. Approximately 8:30.

Q. Tell me how long you remained there before you came out.

A. I don't know, exactly. It seemed like several hours.

Q. Can't you tell me about what hour of the night it was when you came out?

A. No, I don't know what time I came out. I know what time we got down to the jail.

Q. Whatever the hour was when you did come out, you were not taken back in the paint shed, were you?

A. No, sir.

Q. In other words, when you entered the paint

103 shed at 8:30, as you tell us now, you remained there for some time and when you were taken out, you were taken down to the jail, is that right?

A. Yes, sir.

Q. You don't claim that you were beaten or in any way mistreated at all during any of the time while you were in the car on the way down to the jail, do you?

A. No, sir.

Q. So whatever you claim happened, happened while you were in the paint shed, and that is all, isn't it?

A. Yes, sir.

Q. While you were outside of the paint shed and before you entered it, you could not see into the paint shed, could you?

A. No, sir, I could not see at all, only the shadows from the light on the shade.

Q. You never saw anyone strike Purnell, did you?

A. I couldn't identify anyone through the window, no.

Q. Mr. Robinson, I want to know if you ever saw anybody strike Purnell. You understand the question?

A. I understand the question. I never did.

Q. Did you see Henry W. Priest at all that night?

A. I didn't see him. I heard him.

Q. Where?

A. In the jail.

104 Q. Before you got down to the jail, did you see Henry W. Priest?

A. No, sir.

Q. Did you hear him or know anything about his whereabouts?

A. Not until I got in the jail.

Q. While you were out on N. W. 17th Avenue, did you ever see John Sturniolo, Jr., in the paint shed at all?

A. No, sir.

Q. You never saw anybody beat or strike him, did you?

A. No, sir.

Q. Did I understand you to say that there was a cloth shade of some kind over the window?

A. Yes, sir.

Q. The window to the shed is some distance above the ground level, isn't it?

A. Not from where the car was sitting.

Q. Where was the car sitting?

A. At the rear of the office building.

Q. What time of the day was it, on March 29, 1947, when you tell me that your sister came down to the jail?

A. I would say it was approximately nine o'clock in the morning. It was eight-thirty or nine o'clock in the morning.

Q. And who was it that came with her?

105 A. My cousin, Charles Perry.

Q. You remember going out to see Dr. Beckstead, do you not, at the Jackson Memorial Hospital?

A. Yes, sir.

Q. Who was it that took you out to see Dr. Beckstead?

A. A police patrol and some policemen.

Q. And that was on Saturday afternoon, March 29, 1947?

A. Yes, sir.

Q. Can you give me approximately the hour?

A. I would say it was approximately four o'clock in the afternoon.

Q. Out at Jackson Memorial Hospital?

A. Yes, sir.

Q. And after you had gone out there, were you again taken back to the city jail?

A. Yes, sir.

Q. And there you remained until the 31st of March, in the afternoon?

A. It was Monday afternoon.

Q. And when you went out to Jackson Memorial Hospital, you went out there and were examined by Dr. Beckstead?

A. I was supposed to be examined.

Q. You were examined by him, were you not?

A. No, sir.

106 Q. You saw him, did you not?

A. I saw him.

Q. He made an examination of your person, did he not?

A. He tested my heart. He didn't examine my body.

Q. He didn't examine your body at all?

A. He asked me to take my shirt off, and I dropped one shoulder, and he said, "What happened to you?" And I said, "I was beaten by city detectives." At the time I thought they were city detectives. And he said, "Wait just a minute." And he went over, and they had a man that had been drinking, and he worked on him for a while. And he came back and said, "Put your shirt back on. What seems to be wrong?" And I said, "My side hurts, and I think maybe it is my heart, and I would like to have my heart examined."

And he stuck a thing inside my shirt and listened, and then he said, "It is still ticking—take him away."

Q. How long were you out there?

A. About fifteen or twenty minutes.

Q. You had some photographs taken, did you not?

A. Yes, sir.

Q. What was the date that you had them taken?
A. Monday. Monday afternoon—the same Monday afternoon I came out of the jail.
Mr. Botts: Do you have the pictures?
The Witness: My sister has them.
107 The Court: Have you further questions while you are waiting for the pictures?

By Mr. Cushman:
Q. I believe you said you were finger printed?
A. Yes, sir.
Q. Was a photograph taken also, Mr. Robinson?
A. No photographs at the police station.
Q. You are quite sure of that?
A. Yes, sir.
Q. You were in possession of your faculties and you would have known, of course, whether a photograph was taken?
A. Yes, sir.
Q. You are certain of that?
A. Yes, sir.
Q. What time was it that you were finger printed?
A. About two-thirty in the morning.
Q. Take a look at this photograph, and tell me if this is your photograph, please sir?
A. That is me.
Q. And you notice the date, 3/29/47?
A. Yes, sir.
Mr. Cushman: We would like to offer this as Defendant's Exhibit 2.
Mr. Botts: No objection.
108 (The photograph above referred to was marked Defendant's Exhibit No. 2 and received in evidence.)
Q. You say you were finger printed about what time?
A. About two-thirty in the morning.
Q. Do you remember where you were finger printed?
A. No, I don't.
Q. Were you finger printed over at the court house or the building across the street?
A. I wouldn't want to say. I am not sure.
Q. Where was the photograph, Defendant's Exhibit 2, taken, please sir?
A. I don't remember that.
Q. There was no blood upon your head, face, body or limbs when you went to the court house on the night of

March, or early in the morning hours of March 29, 1947, was there?

A. There was some blood on my shirt, on my back, on the sides here (indicating).

Q. When were the photographs taken that have been produced? That bear the date, 3/31/47?

A. That is Monday, March 31, 1947.

Q. At what hour of the day, please sir?

A. About five-thirty or six o'clock Monday evening.

Q. Do you remember what time you were released from jail?

109 A. Not exactly, but it was around four or five o'clock in the afternoon.

Q. After you had been released from jail, or about the time you were released from jail, did you go over to the police station and talk to anyone?

A. Yes, sir.

Q. Do you remember who you talked to?

A. Not by name. We asked for the chief of police, and a man talked to us there that I supposed was the chief.

Q. If you don't remember his name, of course you can't tell us. Can you describe him anymore than that?

A. No.

Q. Who was with you on that occasion?

A. Sturniolo and Priest.

Q. Did you have on the same clothes then you had on when you were taken down to the city jail in the early morning hours of March 29?

A. No, sir.

Q. You did not? When had you changed?

A. I had the same suit, but I did not have the same shirt and socks, etc.

Q. You changed your shirt?

A. Yes, sir.

Q. How long were the three of you there?

A. At the chief of police?

110 Q. Yes.

A. About fifteen minutes.

Q. Talking to whoever was there during that time, I presume?

A. Yes, sir.

Q. Is that right?

A. That is right.

Mr. CUSHMAN: No further questions. Oh, just a moment. I have one other question.

Q. Have you told all of the conversation that took place at your front door?

A. Yes, sir.

Q. Everything that was said?

A. Yes, sir.

Q. You are certain about that?

A. Yes, sir.

Mr. CUSHMAN: That is all.

The COURT: Was it your intention to introduce these pictures?

Mr. CUSHMAN: I will be glad to do it.

Mr. BOTTS: No objection.

The COURT: Without objection, let them be introduced.

(The photographs above-referred to were marked Government's Exhibits Nos. 2 through 5, inclusive, and received in evidence.)

111 The COURT: Further questions?

Mr. ROBERTS: Yes, sir, I have a few.

Further Cross Examination.

By Mr. ROBERTS:

Q. As an aftermath of the incident you have just related, you instituted a civil suit in the Circuit Court of Dade County, for damages, did you not?

A. Yes, sir.

Q. That was for $100,000?

A. That is right.

Q. Did you not first sue Lindsley Lumber Company, and then when you found out that was not the correct person or party to sue, is it not true that you thereupon dismissed that suit and you now have pending a suit against Dania Supply Company, as an outgrowth of this incident?

A. Yes, sir.

Q. Who did you say actually struck you while you were in the paint shed?

A. The only ones that I actually saw hit me were Williams, Bombaci and Perry.

Q. By that you mean the others did not hit you?

A. I do not. They were in back of me and Ford and Yuhas were to my right and another man to my left, but I couldn't see who they were. I tried to see several times but I was straightened up.

112 Mr. ROBERTS: That is all.

Mr. BOTTS: No questions.

(Witness excused.)

Mr. FLOYD: If Your Honor please, we would like to reserve the right to recall Mr. Robinson on cross examination.

The COURT: You have the right.

Mr. BOTTS: May I at this time hand the photographs to the jury and if each of them will look at them and pass them down.

The COURT: I am going to take a ten-minutes recess now.

(Recess.)

AFTER RECESS.

Mr. BOTTS: If the Court please, I wanted to exhibit these photographs to the jury. (Exhibits photographs to the jury.)

ELSIE HANNON was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. State your name, please.

A. Elsie Hannon.

Q. Are you related in any way to Mr. Chester Robinson?

113 A. Yes, sir, I am his sister.

Q. I will ask you whether or not on or shortly after the 28th of March, if you saw Mr. Robinson in connection with any unusual occurrence?

A. Yes, sir.

Q. Where did you see him?

A. In the jail.

Q. The 16th or 17th floor of the city jail?

A. Yes, sir.

Q. About what time of what day was it that you saw him?

A. It was the 29th of March, between nine and ten in the forenoon.

Q. That would be on a Saturday, I believe?

A. Yes, sir.

Q. Will you state what you saw in that connection please, up in the jail?

A. You mean his condition?

Q. Yes.

A. He had welts, terrible welts on both sides of his back; terrible welts higher than your finger, and he was in a ter-

ribly nervous condition. He could hardly tell me what had happened, and he was sobbing and crying.

Q. Did you see any bruised place on the front of his body?

114 A. Yes, sir.

Q. Describe that, please.

A. That was a spot that was quite red and looked like something had been pushed quite hard into the flesh.

Q. Will you indicate or tell us where on the front part of his person that spot was?

A. I believe it was this side (indicating).

Q. On the left side. Was it pretty well up to his shoulder, or down?

A. About half-way, I should think.

Q. Did you at that time see anyone else in jail?

A. Yes, sir.

Q. Who did you see at that time?

A. There was another man there with him.

Q. Do you know who it was?

A. Yes.

Q. Who was it, please?

A. Mr. Priest.

Q. Did you see Mr. Priest on that occasion?

A. Yes, sir.

Mr. Botts: If the Court please, the connection with Mr. Priest has not been made yet, but in order to avoid recalling this witness, I am going to ask the Court to permit me to connect it up.

The Court: If you will promise to put Mr. Priest

115 on the stand—

Mr. Botts: Yes, sir, I will.

The Court: All right. Go ahead.

By Mr. Botts:

Q. Go ahead and tell what you saw about Mr. Priest.

A. He was in bad condition, also.

Mr. Cushman: May I request the Court to strike the witness's answer and instruct the jury to disregard it, on the ground that it is not a proper statement and expresses the witness's opinion, rather than any facts?

The Court: The motion is overruled.

By Mr. Botts:

Q. Will you elaborate on that statement? Did you see him with his shirt taken off?

A. I don't recall. I was badly shaken up with my mind

on my brother. But I saw the men there and saw he was in a bad condition, too. But I couldn't say about his shirt.

Q. How long did you stay up there at the jail?

A. It could have been fifteen or twenty minutes.

Q. Was anyone else with you?

A. Yes, sir.

Q. Who?

A. Mr. Perry—Charles Perry took me in.

Q. Who is Mr. Perry?

A. He is our cousin, my cousin and my brother's
116 cousin, and he was staying at our place at that time.

Q. Did you see Mr. Robinson at any time in connection with these injuries? Did you examine them at any other time?

A. Yes.

Q. When, and if it was more than once, state each occasion.

A. That was in the morning between nine and ten o'clock in the morning, and then I saw him in the afternoon of the same day.

Q. At the same place?

A. Yes.

Q. Did you see him afterwards? I mean after he was released from jail?

A. Yes, sir, I did.

Q. Did you have occasion at any time subsequent to his release to examine the portions of his body which you say in the jail exhibited bruises and wounds?

A. No. I saw him twice on Saturday, and then I did not see him until Monday.

Q. I don't think you understood the question. After his release on Monday, I will ask you, after that time, after he was out of jail, did you have occasion to examine these wounds to see how they developed from time to time?

A. Yes, they were slightly better, that was quite a few hours—slightly better on Monday.

117 Q. And after that Monday, did you see them at any other times?

A. I saw them several times.

Q. What was the development and indications you saw there on those various occasions?

A. Discolorations, like a bad bruise. These welts gradually went down over a period of time, but his back was a terrible color—yellow, and colors that you see after a bruise, and they stayed a long time.

Q. What is your best recollection as to how long after this accident did some appearance or visible appearance [illegible] continue on his body?. Can you tell us how

long was the furtherest time from the date of injury that you saw the diminishing results of these injuries?

A. I can't tell exactly. It was quite a long time.

Q. Your best recollection.

A. Several weeks. He was unable to work for a long time.

Mr. BOTTS: That is all.

Mr. CUSHMAN: We have no questions.

(Witness excused.)

Mr. FLOYD: Your Honor, may we at this time, without interrupting Mr. Bott's chain of witnesses, recall Mr. Robinson?

The COURT: Call Mr. Robinson back.

118 CHESTER ROBINSON was recalled to the stand, and testified further as follows:

Cross Examination.

By Mr. FLOYD:

Q. Mr. Robinson, do you remember having given a deposition under oath in the civil court case of Chester Robinson, Plaintiff, against Dania Supply Company, doing business as a Florida corporation, Defendant, before Mr. Lucious Jay Cushman, at about 9:30 a. m., on November 15, 1948? Do you remember giving testimony in that civil case?

A. Yes, sir.

Q. Do you remember having been under oath at that time?

A. Yes, sir.

Q. Do you remember that Mr. J. F. Gordon, Attorney at Law, and Mr. David Lee, Jr., were also present?

A. There was Mr. Gordon and another man.

Q. Mr. Gordon is your attorney, is he not?

A. Yes, sir.

Q. Do you remember having been propounded the question by Mr. Cushman: (Reading)

"Q. Returning to the 28th of March, when you say you were beaten, you say the first time you ever saw Jay Williams, Joseph Perry

• • •

121 CHARLES PERRY was called as a witness and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. State your name, please sir?

A. Charles Perry.

Q. How are you employed?

A. I am not employed.

Q. What is your ordinary business or means of livelihood?

A. I farmed up until two or three years ago, and I don't farm anymore.

Q. Are you retired?

A. You might call it that, yes, sir.

Q. Where was your farm operation?

A. In Salem County, New Jersey.

Q. Are you related in any way to Mr. Chester Robinson?

A. Yes.

Q. In what way?

A. Cousin.

Q. Do you remember on the morning of March 29, 1947, accompanied by Mrs. Elsie Hannon, going to the Dade County jail or the city jail?

A. Very well.

Q. What relation is Mrs. Hannon to you?

122 A. Cousin.

Q. Will you state whether or not you saw Mr. Robinson at the jail on that occasion?

A. I did.

Q. Will you state what was transpiring and what you observed?

A. We went down, I don't know what time it was. I would say about nine o'clock. It might have been ten, or before nine. We went down and he came out to the bars—

Q. You mean Mr. Robinson?

A. Yes, sir.

Q. Go ahead.

A. And we talked to him a while, and he was in a terrible way. He was beat up terrible, and he took his shirt off and showed us where he was beaten up.

Q. What portions of his person, if any, exhibited the results of the alleged beating?

A. Across his back and both sides of his back, and over this arm (indicating) there was welts.

Q. Let the record show he put his hand on his left arm. Go on.

A. And he had quite a bruise or something similar to that, I would say, about here on his breast.

Q. Let the record show that the witness placed his finger on the center of his left breast about eight
123 inches from the top of his shoulder. Proceed.

A. It was open a little bit and it was weeping just a little. It just seemed to be weeping just like when the skin is broke, and it was bruised terribly.

Q. Was there any break of the skin observable on his back and sides?

A. It was so red, I wouldn't say. It was so angry and red, it might have been and it might not have been.

Q. Over how large an area of his left and right side towards the back, was this bruised and red area?

A. I would say mostly below his shoulder blades on each side, but mostly on the left side.

Q. I will ask you if you examined these areas at any later date or dates?

A. Yes.

Q. When next did you examine these same wounded areas?

A. That was after he got out of jail. That was on a Monday afternoon, towards night.

Q. Were you with him when he had the pictures taken?

A. Yes.

Q. I direct your attention to the pictures that have been introduced, Government's Exhibit 2, 3, 4 and 5, and ask you if these are the pictures to which you refer?

A. Yes.

124 Q. I will ask you whether or not these pictures illustrate the full extent of the wounds and bruises?

A. There is no comparison.

Q. What do you mean by that?

A. I mean on Saturday morning when we went in the jail, his back was red welts. After he got out two or three days—he got out Monday—it had went down considerably, and this red angry had gone out, and it had turned a sort of bluish-yellow cast, and the swelling had gone down considerably.

Q. Did you observe these same areas from time to time at still later dates?

A. Not to amount to anything.

Q. Do you know how long it was before the bruised appearance subsided or disappeared?

A. I wouldn't like to say.

Q. While you were down at the jail on that occasion, did you see a man named Henry Priest?

A. Yes.

Q. Will you state whether or not you examined his person in any way?

A. Yes. He also came up to the bars and stood alongside of Ches.

Q. By "Ches" you mean Chester Robinson?

A. Yes. This man came out there, and took his
125 shirt off and turned around so I could see his back and he was welts pretty badly. I wouldn't say as bad as Robinson, but he had been worked on pretty nicely.

Q. You didn't see Bombaci, did you?

A. No.

Mr. Botts: That is all.

Cross Examination.

By Mr. Cushman:

Q. Where did you live at that time?

A. I lived with Chester Robinson. I can't call the street and number to mind.

Q. I suppose you still live with him?

A. No.

Q. Do you know whether Mr. Robinson had gone out to Jackson Memorial Hospital and been examined by Dr. Beckstead?

A. Only hearsay.

Q. Only what Mr. Robinson told you, I suppose?

A. I don't know who told me.

Q. But you found it out, at any rate?

A. I didn't find it out. I just heard that.

Mr. Cushman: That is all

(Witness excused.)

Mrs. Ernest Sussman was called as a witness, and
126 being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Botts:

Q. State your name, please ma'am.

A. Mrs. Ernest Sussman.

Q. Where do you live?

A. 2138 N. W. 43rd Street.

Q. Do you know Chester Robinson?

A. Yes, sir—he rents from us.

Q. What is your husband's name?

A. Ernest.

Q. And you and your husband own the property in which Mr. Robinson was living at this time?

A. That is right.

Q. Did you go down to the jail and see him in jail?

A. No, sir.

Q. Did you see Mr. Robinson on or about Monday, March 31, after he had been released from jail?

A. Yes, sir, I did.

Q. I will ask you if you had an opportunity to examine any portion of his person. Did he remove his shirt where you could see him and did you observe him?

A. He removed his shirt and I saw bruises on either side of his back, and he had a big bruise on his back. And this was several days after it happened.

127 Q. I hand you some photographs, Government's Exhibits 2, 3, 4 and 5, and ask you if the discolored areas there correspond to the bruised areas which you examined?

A. Yes, sir, they do, but they are much dimmer.

Q. You mean to say that the apparently bruised areas shown here are, compared to the bruises you observed considerably less?

Mr. Floyd: Two questions ago when the witness indicated on the front part of her body, did we let the record show where she was pointing to?

The Court: Suppose you do it for yourself. Please state what portion of his body the bruises was on.

The Witness: It was up here in his shoulder.

Mr. Floyd: Let the record show the witness indicates with her hand to her right shoulder.

The Court: I would say the right side of her breast rather than the shoulder.

Mr. Floyd: Yes, sir.

Mr. Botts: Are you certain about what side it was?

The Witness: No, sir, I wouldn't say it was the left or right. I do know there was a bruise on the front side of his chest.

Mr. Botts: That is all.

Mr. Cushman: No questions.

(Witness excused.)

128 Ernest Sussman was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Botts:

Q. You are the husband of the lady who just left the stand, are you not, sir?

A. I am.

Q. And you are the landlord of Mr. Chester Robinson and were so in March, 1947?

A. I am, sir, and was.

Q. On or about the afternoon or evening of March 31, Monday, March 31, did you have occasion to see Mr. Robinson with his shirt off and examine any portion of his person?

A. At night.

Q. Did you observe any bruises or welts or contusions on his body?

A. Yes, sir. He was much discolored.

Q. And what portion of his person did you observe these bruises or discolorations on?

A. Under his arms and on the front part of his back.

Q. I hand you Government's Exhibits 2, 3, 4 and 5, and ask you if those photographs illustrate in a reasonable manner the locations on his person where these bruises
129 were located?

A. Approximately, sir. But these seem not to tender it quite as strongly as I saw it. It was much more discolored than is shown in these photographs.

Q. I wonder if by chance you observed a bruised spot on the front of his person?

A. Yes, sir, I think it was on the right side, approximately here (indicating).

Q. Are you positive what side it was on?

A. No, sir, but I believe it was on the right side.

Q. What was the character of that bruise?

A. It looked like a round one.

Mr. Botts: That is all.

Cross Examination.

By Mr. Cushman:

Q. Were you along when the photographs were taken?

A. No, sir.

Q. Did you happen to know they were taken before you saw Mr. Robinson.

A. Before I saw him? No, sir.

Q. Did I understand you to mention some round wound?

A. Wound? No, sir. A round, dark mark.

Q. Where did you say that was?

A. It was about here (indicating).

Q. Indicating the right breast, just above the
130 right shoulder.

A. Below the right shoulder, I believe it was, on

the right side. But I am not positive whether it was on the right or the left.

Mr. CUSHMAN: That is all.

(Witness excused.)

Mr. BOTTS: If your Honor please, that concludes the Chester Robinson testimony, with the exception of Mr. Giroux.

The COURT: Go ahead.

HENRY W. PRIEST was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. What is your name?

A. Henry W. Priest.

Q. How old are you?

A. I will be fifty-two next September.

Q. Where were you born?

A. Near Pensacola, Florida.

Q. In March of 1947, how were you employed?

A. I was employed as a truck driver for Lindsley Lumber Company.

Q. What is your weight?

131 A. At that time I weighed 156 pounds. Now I weigh 145.

Q. Do you remember an occasion about the 28th of March, 1947, visiting the sign paint shop at the Lindsley Lumber Company?

A. I sure do, yes, sir.

Q. How did you happen to go there?

A. One of the employees at Lindsley Lumber Company, I believe it was Mr. Riley, came to me and said Mr. Will Lindsley wanted to see me. I stepped out the door, and Mr. Williams said, "Right over this way."

Q. Who is Mr. Williams?

A. He was a private detective. The gentleman sitting right back there (indicating). Mr. Williams escorted me to the paint shed and we went inside, and he locked the door.

Q. Was there anybody else in the paint shed at that time?

A. Yes, sir. There was four more detectives and Mr. Yuhas.

Q. Can you identify these men? Place your hand on the shoulder of every person you can recall was there. Let the record show he put his hand on Mr. Bombaci's shoulder.

A. This looked like—this looks like him here. He looks like he has gained weight.

132 Q. That is Mr. Perry.

A. This is Mr. Williams, (indicating).

Q. All right. Now then, will you describe in detail, Mr. Priest, all that took place. Describe the interior of that building as you observed it, and what took place after you entered.

A. Will it be all right if I say it in the words as it was said to me?

The Court: Yes, and refer to each person by name. Don't say "They".

By Mr. Botts:

Q. Proceed.

A. When I got over inside of the paint shed and entered the paint shed, all the windows had wall boards of some kind on them. It was dark. And they locked the front door and the back door was closed. I don't know whether the back door was locked or not. And one of the men stood as a guard at the front door. I can't identify him, I went in so fast.

When I got in there, Mr. Williams asked me my name and I told him. He said, "Have you any defects?" I said, "No, sir, I haven't, only I went down this morning and had a lockjaw shot." I had hurt myself. He said, "Have you any heart trouble?" I said, "No, sir, not that I know of." He says, "Are there any other ailments?" I said, "No, sir."

133 He says, "Do you know why you are here?" I said, "No, sir." He said, "We are representing the F. B. I., and there has been a lot of material stole. We are not after you truck drivers, but we are after the higher ups. Do you know of anybody that has been stealing lumber?" I said, "No, I do not." He said, "How about Robinson? Do you know Robinson?" I said, "Yes, sir, I know Robinson by sight." And he asked me if I knew Sturniolo, and I told him I did. He says, "Do you know Ben Buttrey?" And I said, "Yes, sir." He says, "What does he do?" I said, "He is supposed to be the yard man."

He says, "Now, I tell you. If you will come clean with us and tell us all that you know, I will turn you loose and you can go right home to your wife. But if you don't tell us, we are going to give you plenty of trouble." I says, "Chief, I don't know—"

Q. Why did you call him "Chief"?

A. Because I heard the rest of them call him "Chief." He said he didn't want me to call him "Chief." He said he didn't want any of that stuff. I said, "I won't", and he said, "Stand up". So I stood up. Previous to that he had made me take my glasses off, and there was a 150-watt light shining directly in my eyes. And he made me put my hands behind my head like this (indicating) and stand there for about a period of fifteen minutes. And
134 when he told me to get down, I couldn't see nothing. I was blind. He said, "Sit down." I went to sit down on a stool about as high as one that would be in a beer parlor, and Mr. Williams jerked the stool out from behind me, and I fell over on my head. He said, "Get up," and I got up. He says, "Stand up; you look too comfortable sitting down." And I stood up again in front of the light.

He says, "Are you willing to talk?" I said, "I would gladly talk if I knew anything to talk about." Mr. Yuhas called him over and said something to him. I don't know what he said because I couldn't hear him. He says, "You are going to talk. We have got from now on and we are going to keep you here and we are going to beat hell out of you until you do talk." I said, "I don't know nothing to say. If I knew something to say, I would say it—don't think I wouldn't." Mr. Williams took a piece of rubber hose—it looked like hose—about that long (indicating) and he hit me on the shoulder, I guess six or eight times. He didn't knock me down at the time, and that dark complected man hit me with a hank of sash cord, and then Mr. Williams said, "You are a pretty tough old son-of-a-bitch." He says, "I will see what I can do for you." Mr. Williams hauled off and hit me right back of the head and knocked me on the floor, and this shoulder (indicating) hit against the wall. He said, "Get up, you son-of-a-bitch, and he snatched me by my arm and pulled me up.
135 He says, "Stand up." And I stood up. He says, "Are you ready to talk yet?" I said, "Mr. Williams, I don't know nothing to talk about." He says, "You are a God-damn liar, and you are going to talk before it's all over with." And he says, "We will stay with you from now until tomorrow and you will talk."

About that time. Mr. Ford over there said something to Mr. Williams, and Mr. Williams stopped for about a period of twenty minutes. And then Mr. Ford talked to Mr. Wil-

liams, and what they said I don't know. So Mr. Williams let me rest for about fifteen or twenty minutes. I wanted to smoke and they wouldn't let me. He says, "You might as well come clean. We want the truth. We are going to turn you boys loose. Lindsley is going to fire you, but that won't keep you from getting another job. Mr. Lindsley will pay you off, and we will recommend you." I says, "Honest, I don't know. I haven't stole the lumber."

He said, "Didn't you steal nails?" I said, "No, sir." He said, "Why didn't you?" I said, "I didn't have to steal, and on top of that, Lindsley Lumber Company never had no nails. They had a few little old nails around there, but for building purposes, they were out of nails." He said, "How about cement?" I said, "Lindsley Lumber Company hasn't had cement for quite a while." I said, "Mr. Yuhas knows we haven't got that. If I was going to steal
136 it I couldn't because they haven't got it." He said, "Yes you did, too." Mr. Williams knocked me down again on the floor, and when I got up, he knocked me down again. He said, "You son-of-a-bitch, you are going to talk." I said, "You can do anything you want to, but I can't tell you, because I don't know." He rested about fifteen minutes, and Mr. Ford stopped him again—or he stopped.

About that time it was getting late in the afternoon, and I seen some of the men start knocking off over to the place. Mr. Williams come up to me and said, "Come and go with me." He took me out right in front of the paint shack and put some handcuffs on me so tight my wrists began to swell. After a while, I blowed the horn and he comes out there and says, "You son-of-a-bitch, don't you blow that horn no more." I said, "Can I smoke a cigarette?" And he says, "No, you can't smoke a cigarette. You are lucky to be here." About that time it was sundown or dusk. They took some man in there, but I don't know who it was.

After a while they took me back in there and they drilled me over it all again. Mr. Bombaci—if that is Mr. Bombaci back here—and Mr. Ford, and Mr. Williams, and Mr. Yuhas and a man I don't see, was in there. Mr. Williams knocked me—they were kind of in a circle—and Mr. Williams hit me, and when I fell over against the dark complected man, he said, "You son-of-a-bitch, don't you fall
137 against me." And Mr. Ford said, "Bastard, what are you going to do? Push on me?" I said, "No,

sir. The man knocked into me." And Mr. Yuhas was standing right there watching. But this other man I don't see in here, he beat me pretty bad. After a while, they decided they would go see my wife. I was living on 27th Street. They all went there, so she says—

Q. Wait—you can't tell what your wife said to you, unless it was in the presence of these defendants.

A. They left. All but one man left, and that was the man with the black hair back there, sitting next to Mr. Yuhas. Mr. Williams handcuffed me tight, and he said, "We are going out to have a little lunch and look around a while." So they left me handcuffed to a chair. And Mr. Williams said, "If that son-of-a-bitch even looks like he is going to move, kill him, and we will defend you on it." He says, "You aren't going to give me any trouble, are you?" And I said, "No, sir, how do you think I could give you any trouble, handcuffed like this?"

He said, "Would you like to smoke?" And I said, "I sure would enjoy a smoke." He says, "I am going to give you a smoke." That man did give me a cigarette. He lit it and stuck it in my mouth, and I smoked it. He said, "Would you like for me to take the handcuffs off one hand?" And I said, "I would appreciate it, but if it will get you in any trouble, don't do it." But he took
138 the handcuffs off one hand. He says, "It is bad to do this, but we have to do it."

The Court: What man are you referring to?

The Witness: The man sitting right back there (indicating) with the black hair.

By Mr. Botts:

Q. Go on.

A. He says, "If you will tell me the story, all you know by the time the Chief gets back, I will try to make it easy on you." I said, "Mr., I don't know nothing to tell you. If I did, I would tell you." He says, "He goes nuts once in a while, and he is mean as hell when he gets mad. Anything is likely to happen. He is likely to take you out in the Everglades and kill you."

I said, "I don't know nothing." He said, "By God, you do. You tell me now and I will talk to him when he comes back." And I said, "I don't know a thing to tell you."

In a period of around forty minutes, Mr. Ford and Mr. Williams and Mr. Yuhas and that man sitting right there at Mr. Williams's left came back inside. Mr. Williams called this gentlemen—what is his name?

Mr. CUSHMAN: This is Mr. Bombaci.

A. (Continuing) Mr. Williams called Mr. Bombaci out. I could hear him ask Mr. Bombaci if I had made any statement. And Mr. Bombaci told him I hadn't. He says, "Okay." The private detective that is not in here had an automatic gun under one of his arms. He pulled off his coat, took the gun out of the holster from under his arm, and he says, "Let me have him." So he took me, and he beat me. He knocked me down several times. Mr. Williams hit me again, but that time Mr. Williams never knocked me down. And Mr. Yuhas would call one of them to one side and whisper, and Mr. Williams would ask me another question about what I had stole. I says, "I haven't stole anything." Mr. Williams and Mr. Bombaci jumped on me again and knocked me down. That went on until about twelve-thirty in the night. And Mr. Yuhas was back of them and whenever I didn't talk right—I figured I wasn't talking right—Mr. Yuhas would tell Mr. Williams something, and one of the detectives would hit me. I know it was late in the night, and Mr. Ford walked over to Mr. Williams—of all Mr. Ford's licks, that he gave me, none of them didn't injure me, and he was the nicest one of the whole outfit, and Mr. Ford stopped Mr. Williams and Mr. Bombaci and the other detective that is not in here from hitting me. And about twelve o'clock or a little bit after, I missed Mr. Ford and I didn't see Mr. Ford anymore that night.

And Mr. Williams said, "You are coming clean, you son-of-a-bitch. We are tired of fooling with you." I says, "I don't know nothing else to tell you." He said, "Did you steal one hundred sacks of cement?" I said, "No, sir." He hit me up aside the head, and I said, "Make it two hundred." He says, "Did you steal any wall board?" I said, "No, sir." He says, "What?" And I said, "How much did I steal?" He said, "One hundred sheets." And I said, "Make it one hundred and fifty sheets, if you want to." He says, "Did you steal any flooring?" I said, "No, sir." He said, "Yes, you did." I said, "How much?" He said, "Make it one thousand feet." I said, "Make it a thousand feet." He said, "Did you steal any nails?" I said, "Did I?" He said "Yes." I said, "How much?" He said, "Fifty kegs." I said, "Make it one hundred kegs." He said, "What else did you steal?" I said, "I don't know." He said, "Do you know different kinds of molding?" I said, "Some kinds I do." He said,

"How much of that did you steal?" And I said, "How much did I steal?" He said, "Ten thousand feet." I said, "Fifteen thousand feet," or something like that.

Mr. Yuhas didn't seem like he was satisfied and he and Mr. Williams went into a conference. And then he went and got the lumber book and named lumber I have never heard of before or since. He said, "Did you steal any lumber?" I said, "How much?" He said, "Ten thousand feet or fifteen thousand feet." I said, "Make it twenty thousand feet." Anything they would tell me I took or stole—any kind of material or molding or building material I had never heard of before—I told them I stole it and maybe some more.

141 Mr Williams said, "I don't know what we can do about the old bastard now." He said, "Did you know I am going to take you to Raiford?" I said, "I didn't know it." He says, "You are still going to talk." He said, "I am going to get the job of taking you to Raiford to go on the God-damn chain gang." He said, "And if I get half a chance, I am going to pull you out of the truck, you son-of-a-bitch, and kill you."

Mr. Williams had an automatic pistol on him and he pulled the pistol out of his pocket, and he said, "Do you want that?" And I said, "No, sir, no part of it." He says, "What would you do with me if you had me out in the Everglades?" I said, "You and I alone?" He said, "Yes." I said, "And I had the gun?" He says, "Yes." I said, "Your bullets?" He said, "Yes." I says, "I wouldn't do nothing, because you are so God-damn much younger than I am, I couldn't." He said, "Suppose you had your gun and your bullets?" I said, "It would be a different story." I said, "It doesn't make any difference what you do with me." I said, "You can take me out in the Everglades and kill me, because you have beat me so bad, it wouldn't hurt me." And Mr. Yuhas stood up and watched them beat me unmercifully.

About two o'clock or a little bit afterwards, they put me in the car and handcuffed me then, and took me to the city jail and had me finger printed and had me put in the investigation department. And finally the jailer
142 came to me and said, "You can go home." But I will say one thing for Mr. Ford, he was really white for a police officer. It looked like they wanted to drag him in on it and I could tell that man didn't want to hit me at all. But he did strike me several times, but not enough to hurt me. But he stopped them twice.

The Court: Mr. Priest, these gentlemen for the defendants have a right and no doubt will ask you questions in the morning. I am going to excuse everybody now. Between now and tomorrow morning, I don't want any Government agent nor any of the defendants nor anybody on their behalf to talk to you, nor you talk to them. Don't talk to anybody about this case, and be back here at nine-thirty in the morning.

(Conference at bench between Court and counsel.)

Gentlemen of the jury, some of you may recall there was a question about newspaper articles which arose at the trial we had here before. It is suggested to me or I will tell you on my own motion, I direct you not to read any accounts of this trial at all. I don't expect it is too much of a hardship on you. Read the papers all you please, except do not read accounts of this trial. During the course of the trial, I will not only ask you but tell you not to read any of the accounts which appear in the paper.

Adjourn court until nine-thirty in the morning.

143 (Whereupon, at 4:40 o'clock p. m., court was adjourned until Tuesday morning, January 18th, at 9:30 o'clock, a. m.)

144 (Court was reopened for the trial of this case on Tuesday, January 18th, at 9:30 o'clock, a. m.)

Proceedings

Mr. Botts: If Your Honor please, there is a doctor present who examined one of the patients, and because he is so busy, counsel for the other side have agreed we should call him now.

The Court: Call him.

Dr. James Putnam was called as a witness and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Botts:

Q. What is your name?

A. Dr. James Putnam.

Q. Your address?

A. 902 Huntington Building.

Q. How long have you been practicing medicine?

A. Since September, 1934.

Q. Do you know Frank J. Purnell, Jr.?

A. I saw him back in March of 1947.

Q. Did he come to your office as a patient on March 29, 1947?

A. Yes, sir.

Q. Did you make a physical examination of Mr. Purnell?

145 A. Yes, sir.

Q. Will you state what your examination disclosed?

A. If it is all right, I would like to read my dictated notes.

Q. You may refresh your memory from those, or if they have no objection, you can read from them.

Mr. CUSHMAN: If the witness proposes to read from the notes, I think they should be submitted to counsel.

The COURT: Technically he has a right to refresh his memory, but he cannot read from them.

By Mr. BOTTS:

Q. Proceed, Doctor.

A. Mr. Purnell was referred to my office, or brought to my office by Mr. Dence, his attorney. He gave a short history, stating—

Mr. CUSHMAN: May I respectfully object to the statement, your Honor?

The COURT: Objection sustained.

By Mr. BOTTS:

Q. Tell what your examination revealed.

A. The examination of this patient revealed no evidence of injury about the head, eyes, nose or throat; no evidence of any bruises on his face. His heart and lungs were negative on physical examination. The examination did reveal two areas of redness approximately two by two and

146 a half inches in length in the lower left chest. The left upper arm posteriorly shows a large area of redness with some swelling, and a slight increase in heat. This area measured approximately five and a half inches by three inches.

I fluoroscoped his chest and there was no evidence of injury inside the chest. My examination revealed contusions or bruises of the body.

I saw him again on the 3rd of April, and at that time he was complaining of headaches and a pain in his left shoulder. The only evidence of injury, in addition to the one I have mentioned before was an area of ecchymosis or bruise, old blood under the skin. This was in the lower part of his right arm on the posterior surface about in

this region here (indicating). There was also evidence of a bruise over—there was still evidence of the bruise mentioned on his left back.

On the 7th of April I saw him again, complaining of pain in his right lower forearm. I found a small lump and I—

Q. Where was that?

A. In the lower third of his forearm, right forearm. He complained of a little weakness of his fingers, but the site of the injury and the weakness were incompatible with the nerve supply of the little finger, and I suggested
147 local heat and massage to the area.

Q. I call your attention to Government's Exhibit 1, a picture of Mr. Purnell's back, and I call your attention to two marks across the back on the lefthand side of the back. I will ask you if you see those marks I have indicated?

A. Yes, sir.

Q. I will ask you if it was in approximately that area in which you discovered the bruise that you have described on his back?

A. Yes, sir. That was approximately the area in the left region of the back, posteriorly.

Mr. Botts: That is all.

Cross Examination.

By Mr. Cushman:

Q. How far above the wrist on the righthand side was the bump you mentioned?

A. It was approximately in this region here (indicating) approximately three and a half to four inches above the wrist.

Q. On the inside or outer side of the arm?

A. Anatomically, it is on the inside of the arm.

Q. About three inches above the wrist?

A. Below the wrist, yes, sir.

Q. It was up on the arm, is that right?

A. Yes, sir, on the forearm.

148 Q. Was that due to something that had to do with the bony structure or was it something that had to do with the flesh?

A. It was in the soft tissue, or the flesh, the bruised area was.

Q. How large was that area?

A. It was approximately three inches in length, and about one to one and a half inches in width.

Q. Is that the bump you are talking about?

A. No, that bump was just only a small thing, about like a marble.

Q. About the size of a marble?

A. A small marble, yes, sir.

Q. That bump that you speak of was in the flesh part of the arm?

A. In the soft flesh, yes, sir.

Q. What time of the day was it you made the examination, please sir? You told us it was on the 29th of March.

A. I frankly don't remember whether it was late morning or early afternoon. I didn't make any notation as to the time.

Q. You found no marks of any kind on the left arm, I suppose, or you would have mentioned it?

A. I didn't find any evidence.

Q. What?

149 A. No, sir.

Q. No evidence of any marks on the left arm?

A. No, sir.

Q. Mr. Botts has referred to something in the photograph he showed you. You did not see any such mark as that at the time you examined the young man, did you?

A. Yes, sir. I saw two areas of redness.

Q. You did not see any marks such as you see in that photograph, did you?

A. I saw an area of redness and two marks on his left chest, posteriorly.

Mr. CUSHMAN: That is all.

Mr. BOTTS: You refer to his left chest, posteriorly. That is what ordinary people would say was the left side of his back, isn't it?

The WITNESS: That is right.

Mr. BOTTS: That is all.

(Witness excused.)

HENRY W. PRIEST was recalled to the stand, and testified further as follows:

Cross Examination.

By Mr. CUSHMAN:

Q. Mr. Priest, did I understand you to say that when you entered the paint shed just before twelve o'clock

150 noon, on March 28, 1947, that you saw in the paint shop, Williams, Ford, Bombaci, Yuhas and Perry, but you were not sure about Perry?

A. I said I saw Mr. Williams and Bombaci, and what is that other man's name?—Giroux—but I am not positive about Mr. Ford.

Q. Didn't you tell us yesterday when you testified that when you went into the paint shop, you saw Williams, Ford, Bombaci, Yuhas and you weren't sure about Perry and didn't mention Giroux at all?

A. When I entered the paint shop there was some men on the side and some in the back I couldn't see. But I did recognize Mr. Bombaci, Mr. Williams, Mr. Perry and Mr. Yuhas.

Q. Do you remember testifying yesterday, Mr. Priest? Yesterday afternoon? You remember testifying yesterday afternoon?

A. Yes, I do.

Q. Don't you remember you said Ford was in there when you went in about twelve o'clock?

A. I don't remember saying Mr. Ford was in there at that particular time. I do remember saying Mr. Ford came in later.

Q. When did he come in?

A. They had knocked me around there so much, I don't remember exactly when he did come in. They had held me up in front of that light and blinded me until I
151 wouldn't recognize anyone who came in.

Q. How long were you in there before twelve o'clock noon?

A. I was in there between sundown and dark.

Q. And then you were taken out and how long did you stay outside?

A. About forty or forty-five minutes.

Q. Was it dark when you came back?

A. It was.

Q. I am talking about during the daylight hours. That is, the time between the time when you first went into the paint shop and the time you say you were taken out. I want you to tell me whether Ford was in there?

A. You couldn't tell whether it was daylight or dark. I remember when I came back into the paint shop after I was taken out and handcuffed to the car, that when I came back in there, I recognized Mr. Ford.

Q. Had you seen him before that day?

A. I don't remember seeing him before then.

Q. Isn't it a fact that when you testified about this matter in the civil case that is pending, isn't it a fact that you

told me you didn't see Ford until nine-thirty or ten o'clock at night?

A. No, sir, it isn't a fact. I absolutely knew no time at all in that paint shop. I didn't know whether it was daylight or whether it was dark, not until I came out of
152 the paint shop between sundown and dusk-dark.

Q. I will ask you if you remember testifying in the civil case that I mentioned to you before?

A. I remember it, yes.

Q. Do you remember this question being asked you: (Reading) "Q. Is it your testimony that the first time you saw Charles R. Ford was around nine-thirty or ten o'clock at night?" And do you remember the answer you gave: (Reading) "A. To the best of my knowledge, yes."?

A. That is right.

Q. Is that still your testimony?

A. That is still my testimony.

Q. I understand your testimony now to be that the first time you claim to have seen Charles Ford was nine-thirty or ten o'clock that night?

A. To the best of my knowledge I would judge it was that, but I had no way of telling the time in that paint shop.

Q. Is that your testimony?

A. That is my testimony.

Q. Did I understand you to say yesterday that Bombaci was the one who was left in the paint shed with you when the others went away?

A. To my best knowledge, Bombaci was the man that was left in the paint shop.

Q. Do you know Bombaci?

153 A. The man I take to be Bombaci is the man that is sitting over there to Mr. Yuhas's right (indicating).

Q. Is this the one?

A. That is the man. That is the man I recognize him to be.

Q. How about this man here (indicating). Is he the one that was left with you?

A. No. I take it to be Mr. Bombaci.

Q. Do you know who this man is I am pointing to?

A. I take him to be Mr. Perry.

Q. Didn't you testify that Perry was the one that was left in that shack with you, when you were testifying in the civil case?

A. I don't remember which I said, but I know it was one of the two of them left there.

Q. Well, which was it?

A. I still say in my mind that it was Mr. Bombaci.

Q. I will ask you if this question was asked you in the civil case: (Reading) "Q. What detective was left with you?" And your answer: (Reading) "A. I think it was Perry." "Q. And you and Perry were left alone there?" Was that your testimony?

A. That was my testimony, but both men have
154 changed in two years' time, and I am not positive, but it was one of the two men that was left in the paint shop with me.

Q. Yesterday you testified it was Bombaci. Is it your testimony this morning that it was Perry?

A. It was one of the two men, but I still think it was Mr. Bombaci.

Q. You testified in this civil case last November. Is your recollection and your memory in this matter better now than it was last November?

A. No, it isn't, but it is still the same.

Q. Do you think you would recognize Giroux if you saw him?

A. Yes, sir, I sure would.

Q. Have you seen him here?

A. I don't see him in the court room.

Q. You didn't see him yesterday?

A. I saw him here yesterday, yes, sir. I saw him here this morning.

Q. Was he the one who was left in the shack with you?

A. I still say that in my best remembrance it was either Mr. Perry or Mr.—whatever that other man's name is.

Q. Mr. Bombaci?

A. Mr. Bombaci.

Q. And you don't know which one it was?

A. I don't, no, sir.

155 Q. Did you talk to Mr. Giroux yesterday?

A. No, sir.

Q. Did you talk to him this morning?

A. No, sir.

Q. When you were testifying in that civil case, you never said anything at all about anyone claiming to you that they represented the F. B. I., did you?

A. I don't remember whether I did or not, but I still say Mr. Williams said he was working out of the F. B. I. office.

Q. After you had been taken back into the shop and—that is, after you had been taken out right around dark—

can you give me any idea what time of the night it was when you were taken back?

A. I would judge it was around seven o'clock, maybe a quarter past seven, but I am not positive of the time.

Q. How long were you there after that?

A. After I was released from the handcuffs in the car, I was there from then until around, I should judge, it was quarter to two the next morning. I would say it was between one-thirty and two-thirty.

Q. Had you ever seen any of the men before?

A. Yes, sir.

Q. Before that day?

A. Yes, sir.

156 Q. To know their names?

A. No, I didn't know the man's name at the time.

Q. You didn't know the name of any of them men, I understand your testimony to be, on March 28, 1947; that is correct, isn't it?

A. I knew Mr. Williams, because the Lindsley Lumber Company had hired Mr. Williams, and I was coming out with my truck one day trying to get out on 17th Avenue, and Mr. Williams jumped out and directed traffic for me. And he asked me that day if I recognized him and I said I did, and he said, "You didn't know who I was at the time, did you?" I said, "No." He said, "You do now. I have been working on this case for quite a while."

Q. Did I understand you to say Giroux beat you?

A. Mr. Giroux did—yes, sir.

Q. Mr. Priest, you never saw Purnell that day, did you?

A. Yes, I did.

Mr. CUSHMAN: Mr. Botts, will you have someone bring Mr. Giroux to the door, please?

By Mr. CUSHMAN:

Q. Where did you see Mr. Purnell?

A. He was a lumber salesman at Lindsley Lumber Company, I saw him that morning.

Q. After you had gone over to the paint shop just

157 before noon, did you see him?

A. Not when I came in off the last delivery. Not to my remembrance, I never saw him.

Q. This was on the 28th of March, 1947, just before twelve o'clock noon when you were taken into the paint shop?

A. I am not sure of that date either.

Q. What is your testimony, Mr. Priest? You told the District Attorney that was the date yesterday.

A. I told you and the District Attorney and I told my lawyer that I was not positive of the date, but if he would look over at the police records of the city of Miami, he would see when I entered the jail house and it was the day previous when I got the beating. I am not positive of the date.

Q. Was it the 26th of March?

A. I tell you again I am not positive of the day.

(Mr. Giroux is brought to door of court room.)

Q. Did you ever see that man before?

A. Yes.

Q. Do you know his name?

A. I know him as Mr. Giroux.

Q. When was it you found out that was his name?

A. Since the beating. I didn't know one of them from the other by their names.

Q. Did that man beat you?

A. Yes, sir—some, he did.

158 Q. Some? Is that the man who stayed in the shack with you?

A. If he is the man, he has got awful fat since I saw him. My answer is I don't know whether he was there or not, but he doesn't look like the man.

Q. You are not sure whether it was Perry, Bombaci or Giroux.

A. I still say it was Perry or Bombaci.

Q. Are you sure it wasn't Giroux?

A. I still say that it is my best remembrance it was Bombaci or Perry.

Q. Did I understand you to say yesterday that Ford stopped Williams from beating you late in the afternoon?

A. You sure did.

Q. What time was that? Before you were taken out to be put in the car?

A. No, it was after then.

Q. That was not in the afternoon at all then?

A. Ford stopped them in the night. It was dark.

Q. Didn't you tell us yesterday it was late in the afternoon?

A. No, I didn't tell you nothing of the kind.

Q. What time was it that you say you were finger printed?

A. As soon as I entered the city jail.

159 Q. That was in the dark of the night?

A. Yes, sir. It was after one-thirty in the morning.

Q. Somewhere around two or three o'clock in the morning?

A. It was between one and three.

Q. Was the picture taken at that time?

A. I don't remember if they photographed us or not.

Q. How were you dressed that day?

A. I usually dress in work clothes. I usually wore khaki pants and a white shirt or a blue shirt, or whatever I have.

Q. Did you have a coat on?

A. No.

Q. No sweater of any kind?

A. No.

Q. When was it the following day that you saw anybody? Any members of your family, for example?

A. I didn't see them the next day. I was held in jail. The following Sunday my sons came up to see me.

Q. Up to that time you hadn't talked to anybody except those who might have been in jail with you, is that right?

A. That is right.

Q. You say you didn't have a sweater or coat?

A. Not to my remembrance, yes. I wasn't study-
160 ing about no sweater then.

Q. Do you remember this photograph being taken?

A. I don't remember it. Whenever you are blinded and beat all to hell, you don't know nothing.

Q. That is a picture of you, isn't it?

A. That is right. Yes, sir, it is.

Mr. CUSHMAN: We offer this as Defendant's Exhibit 4.

Mr. BOTTS: No objection.

(The photograph above-referred to was marked Defendant's Exhibit No. 4 and received in evidence.)

By Mr. CUSHMAN:

Q. When was the first time anybody came up to see you? You say Sunday?

A. That was the first time any of my relatives came up to see me.

Q. Did you see or talk to anybody except other prisoners before Sunday?

A. Robinson's sister, I believe it was, came up there. I talked to Robinson and Sturniolo and his sister saw the marks and welts on my back and shoulders and I believe he said it was his brother-in-law, came up there—it was some of his family. I don't remember who it was.

Q. Did you ever consult a doctor?

A. No, sir, I didn't.

161 Q. Never went to a hospital?

A. No, sir. I went home and stayed home for about four weeks, right in the room.

Mr. CUSHMAN: That is all.

Further Cross Examination.

By Mr. ROBERTS:

Q. Mr. Priest, as I recall your testimony of yesterday, you testified that at no time did Mr. Yuhas strike or hit you in any way.

A. I don't remember whether Mr. Yuhas did or not. They was knocking me around there so fast, I didn't know who was hitting me, but I didn't see Mr. Yuhas hit me at any time. If he did, he hit me from the back. He was right there directing Williams, and Williams was popping it to me.

Q. You never heard Mr. Yuhas tell Mr. Williams anything, did you?

A. Mr. Yuhas would take Mr. Williams off to the side and Mr. Williams would ask me questions about what I had stole, and I told him I hadn't. And Mr. Yuhas would take him off and whisper to him, and Mr. Williams would come back and knock me down.

Q. Mr. Yuhas would talk to Williams and then Williams would ask you a question?

A. That is right.

Q. And you never at any time saw Mr. Yuhas

162 strike you, to your knowledge?

A. No.

Q. As a result of the incident which you have just narrated, you instituted a suit over at the Circuit Court of Dade County, did you not, for damages?

A. My lawyer did somewhere. I don't know where.

Q. Do you know the suit was first filed against Lindsley Lumber Company and that was dismissed, and that now you are suing a company by the name of Dania Supply Company?

A. I heard something about it.

Q. And it is the Dania Supply Company you hold are responsible for—

A. My lawyer would know about that, I wouldn't.

Q. Didn't your lawyer explain to you about having to dismiss the other suit?

A. Yes, I did.

Q. And did he explain that you got hold of the wrong defendant?

A. I believe he said Mr. Lindsley had changed his name, or something like that, from the Lindsley Brothers to the Dania Supply Company.

Q. The suit is still pending? It hasn't been tried, has it?

A. Not that I know of, no.

163 Mr. ROBERTS: That is alll.

Re-direct Examination.

By Mr. BOTTS:

Q. Who is the person who you were working for, so far as you know?

A. Lindsley Lumber Company.

Mr. ROBERTS: We object to the question as framed—"Who, so far as he knows".

The COURT: Objection over-ruled.

The WITNESS: I was working for Lindsley Lumber Company. That is the way they paid our checks. It was Lindsley Lumber Company, or Lindsley Lumber and Supply Company. I never paid no attention; I just cashed the checks.

Mr. BOTTS: That is all.

(Witness excused.)

MARY PRIEST was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. What is your name?

A. Mary Priest.

Q. I know you are hard of hearing and if you don't hear the question, just please ask it to be repeated. We will be glad to do so.

Are you the wife of Mr. Henry Priest who just

164 left the stand?

A. Yes, sir.

Q. Do you remember any unusual occurrence happening on a night about the 28th of March, 1947?

A. Yes.

Q. Tell us about it.

A. I had gone to bed. I had retired, and I heard a lot of knocking on the door. It woke me up and I had on my night dress. So I went to the door. I thought it might be a message—I thought it might be a messenger. So when

I opened the door, Mr. Ford was the first one that spoke to me, and he wanted to know if I was Mrs. Priest. And I told him "Yes" that I was. He took his coat, and he turned it as if he was showing a badge or something, but I never saw the badge. They all came in, and Mr. Williams was right behind Mr. Ford.

Q. Who was there?

A. There was five of them.

Q. Do you know their names?

A. I know the names of Mr. Williams and Mr. Ford, and I can recognize them all right.

Q. Could you recognize any of the others if you would see them?

A. I don't know. Mr. Ford and Mr. Williams was the ones that carried on up there.

165 Q. Go ahead and tell what transpired.

A. When they stepped in, my light was not on. The light in the hall was on. Mr. Ford says, "Why don't you turn this light on?" I says, "You can turn it on if you want to." When they all got in, they made me sit down, and they all got around my chair.

Q. Did they give you a chance to go get a bath robe or anything to cover up your night dress?

A. No, sir, and they were all around me.

Mr. CUSHMAN: I respectfully submit that the matters about which the District Attorney is inquiring are immaterial to the charges here.

The COURT: Over-ruled.

By Mr. BOTTS:

Q. Proceed, Mrs. Priest.

A. Mr. Williams says, "I am going to look around." And he shot through the living room into the kitchen to the back door, and he saw it was locked. He came back in and he says, "Are you by yourself?" I said, "Yes, sir." And all of them stood around my chair and gazed at me and never said a word. I said, "What is all this about?" Mr. Ford said, "You ought to know what this is about." I says, "What did you come for?" He says, "We caught your husband stealing lumber at Lindsley's." I said, "You did?" He says, "Yes." I said, "Was

166 there anybody with him?" And he said there was some others. I said, "I am sorry." He says, "What are you sorry for?" I said, "If he did anything like that, I am sorry." He says, "Didn't he tell you he was doing anything like that?" And I said, "No, he

didn't." And I says, "He hasn't been staying here for quite a while." And he says, "He hasn't!"

And they asked me a whole lot of things. They wanted to know if he ran over a man one time, and I said, "No," and they wanted to know how long we had been in Miami, and different jobs he had around Miami. I said, "He worked for the city for a long time," and I says, "He is well known," and I said, "He was a prison guard out in the farm for a while." And Mr. Ford said, "Did he ever steal any chickens out there?" And I said, "No, he never did."

They just had me awful. I was getting so tired, and Mr. Williams pulled something out of his pocket. It looked like a rope or something, kind of long. My legs was just like that (indicating) and he knelt down and when he did, Mr. Ford said something to him or motioned. Anyhow, he stopped him. He started hitting my legs. He says, "You are lying." I says, "I am not." He says, "You know you are lying." And I says, "I am not." I felt terrible. They waited a few minutes, and they decided they would leave. And then Mr. Williams looked up at the door and said, "Who did all this painting
167 around here?" He kept getting after me in a demanding voice. I said, "The landlord did that." And Mr. Ford said something to him. I don't know what it was. Mr. Ford said, "You can relax now."

They kept me in the chair all that time. And they took the telephone number, and they wanted to know if my husband ever gave me any money, and I said, "Very little." I said, "I work." Mr. Williams said, "You work?"—just like that. When they got ready to leave, they said I could relax. They got around my chair like a bunch of hold-up men, that is what they reminded me of, and me in my night gown. That is what it reminded me of.

Q. A couple of days after that, did you see your husband?

A. Yes. He came home and he was bruised. His right shoulder was bruised, and his eye runs. There is something wrong with his eye. And at night when he would go to sleep he would jump. When he would jump, I would wake up and say—

Mr. CUSHMAN: May I respectfully object to this?

The COURT: Objection sustained.

By Mr. BOTTS:

Q. You can't say what was said, but you can tell what happened.

A. He told me his shoulder hurt him. This is the first time I was ever in court and you will have to excuse me.

168 Q. Did you look at his back and body to see if there were any injuries?

A. It was bruised and blue.

Q. Where were those areas?

A. On his right shoulder mostly, and his eye runs. He complains about his eye running a lot, just like he had been hit on his head or something.

Mr. Botts: That is all.

Cross Examination.

By Mr. Cushman:

Q. Do you remember the date that happened, Mrs. Priest?

A: It was the 27th of March.

Q. The 27th of March, 1947?

A. That is right.

Q. Mr. Botts asked you about the 28th of March, 1947. Did you hear him ask you about that?

A. He didn't ask me about that.

Q. Your testimony is it was on the 27th of March, 1947? Is that correct?

A. That is right.

Q. Is that right? That it was the 27th and not the 28th?

A. Yes, it was the very night that all that happened.

Q. And that was the 27th of March, 1947?

A. They still had them at the lumber company.

169 Q. I see. Are you sure it was the 27th or was it the 28th?

A. I know it was the 27th. That is when it happened.

Q. Were you acquainted with Mr. Ford or Mr. Williams or anybody else that you saw that night before that time?

A. No. That was the first time I ever saw them.

Q. When you say Mr. Williams came to your house, did you know his name was Williams?

A. Not at that time.

Q. How long after that was it before you learned his name was Williams?

A. It is natural when they were all up there you learn all that.

Q. When was it you learned of that?

A. The next day. I had to find it out because I wanted to know what it was all about, you know.

Q. You were not acquainted with Ford, were you?

A. No.

Q. When did you first find out Ford's name?

A. I had heard of him, you see, but I hadn't saw him before.

Q. You didn't know him to recognize him when you would see him?

A. No, but I could now.

Q. Did he have on glasses that night?

170 A. No.

Q. No glasses?

A. No.

Q. Did he have on a uniform?

A. No. None of them had on uniforms.

Q. I believe you said that Ford told Williams, or motioned to him to let you alone?

A. He did.

Q. And he motioned to Williams to go on and get out of the house?

A. Mr. Williams was real fast about everything, and there was three or four times that Ford stopped him.

Q. What time was that?

A. Between ten and eleven that night. I had gone to bed. I didn't have time to get any clothes. I was really embarrassed, and that is why I didn't turn that light on when I went to the door.

Q. I understood you to say that Mr. Priest had not been living at home before that.

A. A few nights he had not been in.

Q. And how long was it before he came back?

A. It was two or three nights, after he got out of jail. He said he was afraid those detectives would come back there. I was afraid of the same thing.

Q. How long was it you say Mr. Williams was at the house?

171 A. About a half hour. I thought they never would leave. I was getting so tired.

Q. You mentioned Mr. Williams and Mr. Ford—

A. They were the ones that carried on, and the others would just stand there.

Q. You can't recognize any of the others, I understood you to say.

A. I might recognize them, but their names I wouldn't know.

Mr. CUSHMAN: That is all.

(Witness excused.)

PARKER PRIEST was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. Your name is Parker Priest?

A. Yes, sir.

Q. Are you the son of Henry Priest who just left the stand a few minutes ago?

A. Yes, sir.

Q. Mr. Priest, sometime the latter part of March, 1947, did you visit your father while he was in jail?

A. Yes, I did.

Q. Did you have a chance at that time to examine
172 his body to determine whether or not it showed any evidences of any injuries?

A. I could see him between the bars. I couldn't examine it, but he had his shirt off and I seen the welts and bruises on him. His whole back was red, and I couldn't examine him, but I could see between the bars what shape he was in.

Q. What area of his back was covered by these welts? These welts and bruises?

A. It was mostly on his shoulder and upper part of his back.

Q. Did you examine him at any later time to see whether or not these evidences of injury continued to be observable?

A. He went over to my brother's house and stayed there three days, and I visited him while he was there, and his back was blue at that time.

Q. His back turned blue?

A. Yes, in spots.

Mr. BOTTS: That is all.

Cross Examination.

By Mr. CUSHMAN:

Q. On the shoulder?

A. Yes, sir—shoulder and upper part of the back.

Mr. CUSHMAN: That is all.

(Witness excused.)

173 RAIFORD L. PRIEST was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. Your name, please?

A. Raiford L. Priest.

Q. Are you the son of Henry W. Priest?

A. Yes, sir.

Q. Brother of the man that just left the stand?

A. Yes, sir.

Q. Did you visit your father when he was in jail the latter part of March, 1947?

A. Yes, sir.

Q. Will you state what you observed with reference to his body, with respect to injuries, if any?

A. I saw him from the waist up. His back was in pretty bad shape.

Q. Describe the condition.

A. It was white in streaks. You could tell where he had been hit. You could see the marks on him.

Q. And over what portions of his body did you observe these marks?

A. It was the middle part of his back and one of his shoulders seemed to be swelled up.

174 Q. Did you examine him at a later time to see if these injuries left any observable marks?

A. No. He stayed at my house about three days after he got out of jail, but I didn't want to look at his back anymore.

Mr. BOTTS: That is all.

Mr. CUSHMAN: No questions, your Honor.

(Witness excused.)

Mr. BOTTS: John P. Sturniolo?

The COURT: You are going to Seven and Eight now?

Mr. BOTTS: Yes, sir.

JOHN P. STURNIOLO was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. Your name is John P. Sturniolo?

A. Yes, sir.

Q. How were you employed in March of 1947?

A. I was employed at Lindsley Lumber Company.

Q. Do you remember any occurrence happening on or about the 26th day of March, while you were so employed?

A. Yes. I was returning from a delivery. I used to drive a truck. And when I was returning from the delivery, I was told I was wanted over at the office. But instead
175 of being brought over to the office, I was brought into a paint shack.

Q. Who conducted you to the paint shack?

A. A man by the name of Yuhas.

Q. When you entered the paint shack, who else was in there, if anyone?

A. About four gentlemen were still in there, besides Yuhas, who brought me in.

Q. Would you recognize those men if you should see them?

A. I believe I would.

Q. Step down and identify those men.

A. I would pick out that man (indicating) they called the Chief—I don't know his name. He was there. And the dark haired man was there, and Mr. Yuhas was there, and I think Mr. Ford was standing over in the corner.

Q. Go ahead and state what took place.

A. When I was brought in there, they told me that I should know what it was all about. I had asked them what it was about?

The Court: Don't say "They." As far as possible, tell us exactly what person said that. Who said you should know what it was all about.

The Witness: As I say, I asked them what it was all about, and the Chief—I discovered his name was Mr. Williams—he said I should know what it was all about.
176 "We are trying to discover the theft of property and material that has gone on at Lindsley Lumber Company." I told him I didn't know anything about it. They said that I should and I had better answer the questions the way they asked me, and when I told them I still didn't know anything about it, they proceeded to beat me.

Williams did the beating as far as I could see. He was standing in front of me and he was the one that was doing the beating, as far as I could see. Someone was hitting me from the back, but I couldn't see who that was. When they kept that up, and I told them whatever I told them—I told them that I would go ahead and tell them anything they

wanted me to. I said that, and he would put things down on paper. And he would raise the amount up so I would be forced to say it. I had material out at my place that I had bought from a lot of lumber companies, and I told them I stole that, so they would stop beating me. They did that and that went on until they had a couple of pages full of whatever I said, about materials, etc. They made me sign it afterwards.

Q. How long were you in the shack that day?

A. Approximately three hours.

Q. On the night of the 28th, I will ask you if anything transpired?

A. On the 28th, that is a day and a half afterwards, skipping a day, and the day following, the man named
177 Williams and Ford, and I don't know which one it was after that—it was in the car. Ford stood in the driveway and Williams was at the door at my house. They came right up to my house in the car. And he came up and told me he was going to arrest me for grand larceny. I opened the door and asked them what it was all about, and he put handcuffs on me and started dragging me off. I wasn't fully dressed and I told him I would like to put my clothes on. He said, "All right, but don't try anything."

I went in the house and went in the bedroom and put shoes and a shirt and socks on. And they took me down to the paint shack again. And he said everything I had said before needed collaboration; that the other people—there was different names mentioned and he wanted me to name a lot of pople that I didn't even know, not intimately. I knew them just from working around there, and he wanted me to tell him that they were the ones that stole stuff. I said, "I don't know." And he said, "Could they steal it?" And I said they were in a position to. And he put that down like I told him. Anytime he would mention a name like that and I said I didn't know the man, he would beat me until I told him it was so; that he did steal. Half the people he put down there, I didn't even know.

He made me tell contractors I never even knew. There was a couple of people I had made deliveries to that
178 he forced me to say they were buying stuff on me; that I was delivering it to them and that somebody else was putting it on my truck, and we would split the profits. That beating went on for about two and a half or three hours—I am not sure.

And he had four or five names of contractors and maybe four or five names of people that worked in the company. After that they took me down to the police station and booked me.

Q. This second visit to the shack, did any other workmen go to the shack at the same time you did? Were driven down there?

A. You mean employees of Lindsley Lumber Company?

Q. Yes, sir.

A. Robinson was in the car with me when we went down to the paint shack.

Q. When you got down to the paint shed the night of the 28th when Robinson was with you, who went into the shack first?

A. Robinson.

Q. What did they do to you?

A. They handcuffed me to the car outside.

Q. And how long did you stay in the car outside?

A. From about eight, to eleven or eleven-thirty.

Q. Was Robinson in the shack during that time?

A. He was in the shack from about eight-fifteen or
179 or eight-thirty—just soon after we got there. They took him in and brought Purnell out.

Q. Did you see old man Priest there that night?

A. No, sir.

Q. After Robinson had come out, where did you see Purnell?

A. The car I was handcuffed to was parked right by the door, a distance of about three feet. And when he was led out I was sitting in the car.

Q. Did he recognize you or speak to you?

A. I spoke to him but he didn't recognize me. He was dazed and was being held up on either side by two men.

Q. What did they do with him?

A. They took him out to the other entrance of the parking lot they had, and they came back by themselves. I don't know what happened to him.

Q. After Robinson had come out, then did you go into the shack?

A. Yes, sir.

Q. What happened to you in the shack that night?

A. That night they didn't use any weapons. The first night they had a shank of rope and a broom stick and fists, and things like that. They had a rubber implement that seemed like it was full of lead. I don't know just what you

would call it. It was a blunt instrument and very heavy and stiff.

180 Q. I hand you that picture and ask you if you know what it is.

A. Yes, sir. That is the picture of myself I had taken when I got out of jail.

Mr. Botts: I offer it in evidence.

Mr. Cushman: No objection.

(The photograph above-referred to was marked Government's Exhibit No. 7 and received in evidence.)

By Mr. Botts:

Q. After you had been in the shop and subjected to the treatment you have described on the second night, what was done with you?

A. I don't understand that.

Q. After you had been in the shack that second night, the night of the 28th, was anything done with you then?

A. They just drove us down to the police station and booked us.

Q. How long did you stay in jail?

A. That would be from very early Saturday morning, until Monday evening, sometime.

Q. Who was your attorney?

A. At the time I didn't have an attorney, sir.

Q. Who is your attorney now, if you have any.

A. Mr. Von Zamft.

Mr. Botts: That is all. Oh, just one other question.

181 By Mr. Botts:

Q. Mr. Sturniolo, I show you a second picture and ask you if that shows any of the bruises that were on your body?

A. Yes, sir. Right along in the biceps.

Q. The biceps of which arm?

A. The left one.

Q. And was there any mark on your right arm?

A. Way up high.

Q. Right where the arm joins the shoulder?

A. That is right.

Mr. Botts: We offer this other picture.

(The photograph above-referred to was marked Government's Exhibit No. 8 and received in evidence.)

Cross Examination.

By Mr. CUSHMAN:

Q. Did I understand you to say that the 26th of March, 1947, was the first time you were ever questioned about stealing at the Lindsley Lumber Company yard?

A. Yes, sir.

Q. What time of the day was that?

A. About five-thirty in the evening.

Q. Was that the time you say you went to the paint shop?

A. Yes, sir.

182 Q. I understood you to say that on that occasion there were five men present, is that right?

A. Yes, sir.

Q. Five? You are sure there was no more and no less than that?

A. I believe it was five men.

Q. You recall the occasion, I suppose? Do you?

A. Pretty vividly.

Q. And have you pointed out the men who were there, or do you see them in the court room?

A. There is one man that is not here. I said I didn't think Mr. Ford was there that first night.

Q. What is your testimony now, bearing in mind that you are testifying under oath? Was Mr. Ford there or wasn't he there?

A. The first night I don't believe Mr. Ford was there at all.

Q. On the 26th of March, 1947, your testimony is that Mr. Ford was not there?

A. As far as I can remember, yes, sir.

Q. On the 27th of March, you didn't see any of the men you have mentioned?

A. No, sir.

Q. And on the 28th of March, 1947, what time of the day or night was it you first saw anyone?

183 A. About eight o'clock in the evening.

Q. At that time you were at home, I believe?

A. Yes, sir.

Q. Who was it you say came to the door?

A. Williams came to the door.

Q. By himself?

A. Yes, sir.

Q. And then you went out to the car?

A. That is right.

Q. You were not handcuffed at that time, were you?
A. Yes, sir.
Q. Did you see Robinson?
A. Yes, sir, he was in the backseat.
Q. And you were in the backseat with Robinson?
A. That is right.
Q. Anyone else in the back seat?
A. Yes, sir, there was somebody else in the back seat but it was so dark I didn't recognize them.
Q. After you left home and got in the car then you went down to the place that you call the shack?
A. Yes, sir.
Q. What time did you get down there?
A. Pretty shortly after eight o'clock. It is only about a five-minute drive.
Q. You were not beaten or in any way molested
184 while you were on the way down to the shack were you?
A. No, sir.
Q. How long did you stay out in the car?
A. About two and a half hours.
Q. After that you were taken into the shack?
A. That is right.
Q. Who was in the shack at that time?
A. Williams was in the shack, and Ford came in. About as soon as they drove up, they all went in. There was Williams and Ford, and I believe Giroux was in there taking notes. He isn't in the court room now. And Yuhas was in there, and the dark haired man over there (indicating).
Q. Go ahead. Who else?
A. I don't remember anybody else.
Q. You don't remember the man in gray here (indicating) being there any time, do you?
A. No, sir, I don't know.
Q. You don't remember him being there?
A. No, sir.
Q. His name is Perry. You don't remember him being there?
A. No, sir.
Q. How long were you in the shack that time?
A. From about, somewhere between eleven and eleven-thirty until almost two o'clock in the morning.
185 Q. And have you given me the names of everybody that was in there at that time and during that time?
A. Yes, sir.

Q. Who beat you on that occasion?

A. The only person I could see beating me was Williams. I was hit many times from behind but I don't know who it was.

Q. Who was behind you, do you know?

A. The other four men that were there.

Q. Who were they?

A. Yuhas and Ford and the dark haired man, and Giroux. I don't believe he hit me at all. He was sitting there taking notes.

Q. Were there any shades on the windows to the paint shack?

A. I don't know whether it was a shade or a piece of wood. There was something up there.

Q. Covering the windows?

A. Partially covering the windows.

Q. On that occasion I understood you to say that no one struck you with anything but the fist?

A. I said no one struck me with anything but that black heavy instrument.

Q. On the 28th of March, 1947?

A. Yes.

186 Q. Who struck you with that?

A. Williams struck me on the front.

Q. On what part of your body?

A. About the sides and the upper arms.

Q. Did I understand you to say that the instrument that you are talking about was like a black jack, loaded with lead?

A. It was longer. I would say it was almost a foot long.

Q. Was it heavy?

A. Yes, sir.

Q. Like it was loaded with some kind of lead?

A. Yes, sir.

Q. You didn't have any wounds on your body, did you?

A. No open wounds.

Q. You had no skin broken anywhere, did you?

A. No, sir.

Q. You say you had been beaten the first time on the 26th?

A. That is right.

Q. What with?

A. Fists and a shank of rope and a broom or handle.

Q. When was the picture, the Government's exhibit, taken?

A. That was the following Monday.

187 Q. That would be the 31st of March, 1947, is that right?

A. That is right.

Q. So that that picture was taken five days after you claim you were beaten the first time and three days after you say you were beaten the second time?

A. That is right.

Q. Did you have any other pictures taken other than the ones the jury have there?

A. No, sir.

Q. What time of the day were they taken on the 31st?

A. It was early in the afternoon, I would say, about three o'clock. I am not sure of the exact time.

Q. Were you finger printed at all when you were taken to jail?

A. Yes, sir.

Q. What time of the day or night were you finger printed?

A. It was about two or two-thirty in the morning.

Q. Was there a picture taken there?

A. No, sir.

Q. No picture taken at all?

A. No, sir.

188 Q. You are certain of that?

A. There wasn't no picture taken at that time of night at all.

Q. Was there a picture ever taken while you were in jail?

A. I am not certain, but I think the next day, they had me taken down for the small photos for the record.

Q. How were you dressed on the night of the 28th? Did you have on a coat or jacket?

A. I had, you might call it a flannel shirt—a heavy, flannel shirt, I believe.

Q. No coat or jacket?

A. No.

Q. When was the first time you ever got any clothes while you were in jail, or did you get any clothes while you were in jail?

A. That I don't know.

Q. I suppose you mean by that that when you walked out of jail, you were dressed just as you were when you went in, is that right?

A. I am not sure.

Q. Where did you live at that time?

A. The same place I live now.

Q. And your wife never brought any clothes while you were in jail?

A. She came down to see me—whether she brought
189 me any clothes I don't know.

Q. On the morning of the 29th, had you had any change of clothes of any kind?

A. I don't know.

Q. Is this a picture of you?

A. That is right. That is a picture of me.

Q. Do you remember when that was taken?

A. I think it was the following morning.

Mr. CUSHMAN: I offer this as Defendant's Exhibit No.—give it the next number.

Mr. BOTTS: No objection.

(The photograph above-referred to was marked Defendant's Exhibit No. 5 and received in evidence.)

By Mr. CUSHMAN:

Q. Mr. Sturniolo, did you ever see a doctor?

A. No, sir.

Q. Did you ever go to a hospital?

A. No, sir.

Q. You were charged with grand larceny and a charge filed by the County Solicitor of Dade County, were you not?

Mr. BOTTS: I object.

The COURT: Objection overruled.

The WITNESS: Yes, sir.

By Mr. CUSHMAN:

Q. And you made bond on that charge?

190 A. Yes, sir.

Q. Where were you taken into custody on that charge?

A. Norfolk, Virginia.

Q. Did Perry, this man I am pointing to here—was he ever present on any of the occasions when you say you were beaten?

A. I recognize him, so I must have seen him somewhere.

Q. Bearing in mind that you are testifying on your oath, was he there or not?

A. He was there, but I don't remember exactly which night he was there.

Mr. CUSHMAN: That is all.

Mr. BOTTS: They have asked you about an arrest for grand larceny. Has that case been disposed of?

The WITNESS: Yes, sir, it was dismissed.

Mr. BOTTS: Never convicted?

The WITNESS: No, sir.

Further Cross Examination.

By Mr. Roberts:

Q. I think your testimony is that you never saw Mr. Yuhas strike you, is that right?

A. I said I didn't know, sir.

Q. You never saw it?

A. No. I could never see anybody strike me but Williams.

Q. You have a suit pending against the Dania Supply Company for $100,000 in the Circuit Court, pending at the present time, have you not?

191

A. That is right.

Q. That is an out-growth of the matters concerning which you have just testified?

A. Would you repeat that, please?

(Question read by reporter.)

A. That is right.

Q. You originally filed that suit against this defendant, not the Dania Supply Company, isn't that correct?

A. That is correct.

Q. And you found out you had the wrong defendant, so you filed a new suit against the Dania Supply Company?

A. That is right.

Q. That suit is still pending and as yet has not been tried, is that right?

A. That is right.

Q. Do you know the name of the assistant County Solicitor that dismissed that suit against you?

A. I—

Mr. Botts: I don't believe that is material, if your Honor please.

Mr. Roberts: I think I can make it material.

The Court: Come up here.

(Whereupon, the following private discussion was had between the Court and counsel, at the bar):

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Mr. Roberts: I expect to prove that Mr. Zarowny, who is now assistant county solicitor and has been for three or four months, dismissed this case in the criminal court and that Mr. Zarowny was of counsel with the firm of Murrell, Fleming and Flowers, who likewise represented Mr. Purnell in that suit; and that Mr. Zarowny was of counsel for Mr. Purnell in his civil suit and is the same Mr. Zarowny, who having become assistant county solicitor, has now dismissed the suit, against taking the suit on himself against Mr. Sturniolo.

Mr. Floyed: In addition to which the day the Sturniolo case was called for trial, Mr. Perry, the present defendant

and Mr. Yuhas and other witnesses in the Sturniolo criminal case were present in the Criminal Court of Record at nine-thirty the morning of the trial, and in answer to a question by Mr. Zarowny: "Do you think we have enough evidence to get a conviction in this case?", Mr. Yuhas and Mr. Perry both answered in the affirmative. Immediately after which, Mr. Zarowny, without notice to Mr. Perry or Mr. Yuhas, *nol prossed* the case by public announcement in the court.

The COURT: What do you have to say, Mr. Botts?

Mr. BOTTS: I don't think it has a thing in the world to do with it. I think it is immaterial. The assistant county solicitor acts under the county solicitor and by his
193 direction.

Mr. ROBERTS: I called Mr. Taylor up. He is the county solicitor himself, and he did not know Mr. Zarowny had done this.

The COURT: When was this?

Mr. ROBERTS: About six weeks ago.

Mr. FLOYD: The depositions had been taken.

Mr. ROBERTS: I think we have the right to show the connection and why it was dismissed.

Mr. FLOYD: We feel this way, your Honor. It is not just an ordinary case of *nol pros;* that this has a direct connection with the civil suit, and of course in this case we are endeavoring to prove all the way through the testimony and the court has admitted it without objection from the Government, that there are several suits pending.

The COURT: I think they are material on the interest of the witness as to his credibility. That is as far I am going in that. I would like to think about this, gentlemen.

Mr. BOTTS: If the Court please, they brought this matter out on cross examination. It was not remotely referred to in the Government's case.

The COURT: In other words, it is cross examination that brought out the fact that he was proceeded against criminally?

Mr. BOTTS: That is right, over my objection, be-
194 cause I didn't want to get into this issue. And I am willing to concede that there might be some materiality in the interest and bias of the witness and his interest in the matter on that question. But further than that, I don't think it is proper.

The COURT: There is nothing in the Government's testimony about the criminal case?

Mr. BOTTS: No, sir.

Mr. PRUITT: But it was testified that he was arrested and put in jail.

The COURT: I would like to think about that for a few minutes.

(Discussion ends.)

The COURT: Court take a recess.

(Recess.)

AFTER RECESS:

(Jury not in court room.)

The COURT: Gentlemen, do I correctly understand that under the laws of Florida, that notwithstanding the dismissal of the prosecution against this man, that he could still be prosecuted for the crime of grand larceny?

Mr. ROBERTS: They could re-file another information anytime within two years.

The COURT: Which two years has not expired?

Mr. ROBERTS: That is right.

195 The COURT: And the proceedings which were originally instituted were by information?

Mr. ROBERTS: That is correct.

The COURT: Gentlemen, after consideration of your proffer of proof, I am of a mind to sustain the Government's objection. I think that is a collateral issue and the question of whether this man is a thief or not is not an essential matter in the case. If he was convicted, it would be proper for bearing on his credibility. I propose to tell the jury that notwithstanding the evidence that this information has been dismissed and under the laws of Florida he might yet be prosecuted, and that therefore there has been no final adjudication of the charge, and the only fact is that there is no charge pending at this time, but there has been no final adjudication.

I am going to tell them further that the question of whether he was guilty is a collateral one and they can consider that only as far as it bears on his credibility. And I am going to sustain the Government's objection to your proffer of proof. Let it be noted that defendants by counsel note an exception.

Mr. FLOYD: If the Court please, I understand the court has ruled on it, and I am not trying to change the court's ruling in that regard. It is not the intention of the defense in proffering this, to prove whether Sturniolo

196 was or was not a thief. Our purpose was to show the tie-up between the assistant county solicitor and—

The COURT: That is even more collateral. It is even more collateral to the issue of guilty or not, but I think it is not proper to go into it in this trial. The only material effect of such testimony would be to inferences which the jury might draw as to this man's innocence from the dismissal of his case.

Mr. BOTTS: I understand you are going to tell them that his guilt or innocence is not an issue in this case?

The COURT: I am going to tell them it is not an essential issue; that it is a matter they can consider as to his credibility.

Call the jury in.

(Jury returns to court room.)

The COURT: Gentlemen of the jury, the defendants have indicated their desire to introduce further testimony and ask further questions in regard to the circumstances of the dismissal of the criminal prosecution against this witness, Sturniolo. I have sustained the Government's objection to such testimony, my conclusion being based upon these considerations: The question of whether this young man was in fact guilty or innocent of stealing is not an essential issue in this trial. A man is entitled to his Constitutional rights, whether he be a thief or an innocent man,
197 and the Constitution grants him certain rights in the way such prosecutions must be conducted. I further charge you that under the laws of the State of Florida, and notwithstanding the fact that this criminal proceedings was by way of an information against this man, for grand larceny, notwithstanding the fact that that has been dismissed, that he might still be proceeded against for grand larceny by the State of Florida, if the law enforcement officers should be so advised. If they deem it is proper, they can still prosecute it.

I charge you that there has been no final determination in the courts of the State of Florida, whether this young man is guilty of grand larceny or not. He did testify that a proceeding was started and dismissed. Under the laws of the State of Florida, new proceedings could be started and proceeded to a conclusion. The effect of that is there has been no final determination by the courts of the State of Florida whether this young man is guilty of theft or not. By reason of the fact that it is not our function to try that issue, I am excluding the testimony. I say, as I said before, you have heard that he was accused and proceedings were started against him for theft. You may take into consideration that evidence in your weighing of his testimony as to whether you choose to believe him or not.

The question of whether or not he stole is not an es-
198 sential element in this trial, but you may consider any circumstances about that in your consideration of what weight you should give his testimony.

Are there further questions?

By Mr. Roberts:

Q. Were you there about the time when the Lindsley Lumber truck came out and loaded some lumber and building material from your home?

A. Yes, sir. They brought me out there.

Q. You consented for them to put this building material on the truck?

A. I was forced to put it on the truck.

Q. Do you know how much material was there?

A. I would say roughly about $175 or $200 worth.

Q. What were you going to do with that?

Mr. Botts: I think that is immaterial, if the Court please.

The Court: I overrule the objection. Let him testify.

By Mr. Roberts:

Q. What were you going to do with that material?

A. I was planning to put an addition on to my house.

Q. How large an addition?

A. About eight-by-ten.

Q. Did you buy that lumber from Lindsley Lum-
199 ber Company?

A. Part of it, sir.

Q. Did you have any receipts for it at that time?

A. At that time I did, but I didn't keep them. As soon as I received the material, I disposed of the receipts.

Q. Did you buy any lumber or material anywhere else?

A. Yes, sir.

Q. Where?

A. As I told Mr. Cushman in the deposition, I think it was Bailey's and a few other places.

Q. As an employee of Lindsley Lumber Company, you were entitled to certain employee's discounts, were you not?

A. Yes, sir.

Q. Wouldn't that discount enable you to get the lumber and materials cheaper at Linsley Lumber Company.

A. In some cases, some of the lumber was poor, and I didn't want to purchase it at Lindsley's.

Q. Did you have forty lineal feet of plumbers galvanized strip out there?

A. I believe so.

Q. Where did you get that from?

A. I couldn't say offhand.

Q. What would that be used for?

Mr. Botts: They are attempting to try the criminal case against him in this court and I think they should
200 should not be allowed to go further in that matter.

The Court: Over-ruled. Proceed.

The Witness: They used it to tie down the roof on to the corner posts.

By Mr. Roberts:

Q. Did you have twenty-eight lineal feet of hardware cloth out there?

A. I believe they found that out there.

Q. What was your purpose in using that?

A. That was used underneath plaster.

Q. Do you know how much nails you had out there?

A. Not offhand.

Q. About how many pounds of nails would you say it required to do the job you were contemplating?

A. That is hard to say—I am not a mathematician.

Q. Incidentially, how far had you proceeded with that building?

A. The only thing I had done was to put down a cement floor.

Q. Was that a porte cochere you were converting into a room?

A. It was a garage apartment I was going to extent outward.

Q. I am going to hand you a list and ask you if all of this material was there.

201 A. (Witness reads paper.) I believe this corresponds with the list they made up when they took the stuff off my property.

Q. This is the information that was filed against you.

Mr. Botts: If the Court please, I knew what they were trying to do.

The Court: It is all right as far as the list is concerned. I sustain the objection about any further evidence about the criminal prosecution.

Mr. Botts: I ask the Court to charge the jury that the criminal information should not be considered unless they want to consider his unfair practice—

The Court: I don't think it is necessary to make that statement. The objection is sustained as to any further questioning about the criminal prosecution.

Mr. Roberts: May I read this list into the record?

The Court: You may.

Mr. Roberts: (Reading) "40 Lin. Ft. Plumbers Strap, Galv.; 28 Lin. Ft. Hardware Cloth, Galv.; 1 roll 45# Tiger

Roofing; 1 Roll 90# White; 4 Sacks Lehigh Portland Cement; 42½ #8 D Bright Common Nails, Wire; 25# 16 D Cut Common Nails; ½# 6 D Bright Common Nails; Type AB Plaster Mld. 1/12; D Type Base— C. Fir.—2/8; 2 x 8—Y Pine 2/12, 2/10; 2 x 4—Y Pine 5/10, 1/12, 2/8, ¼, 1/16; 4 x 4—Y Pine 1/12; 1 x 6—Y Pine T & G, 11/16; 1 x 6
202 —Y Pine D4S—6/10, 9/12, 2/14, 1/16; 1 x 6 Pine Pat 105 Siding 1/10; 1 x 12 K.W. Pine D4S—1/16; 1 x 2—W Pine 1/9, 1/11, 1/16; 1¾ Bed Mld. 1/14." (Ends Reading)

By Mr. Roberts:

Q. Is it possible for you to identify or tell us what part of that material you got from any other place or source except Lindsley Lumber Company?

A. No, sir, I don't believe it is. What you can do is ask Lindsley's to look in the record they have and determine what I did buy from them, because I did buy a few things.

Mr. Robert: That is all.

Further Cross Examination.

By Mr. Floyd:

Q. Mr. Sturniolo, you have made references to the deposition that was taken by Mr. Cushman of counsel for one of defendants here today. Is that the same deposition that was taken November 12, 1948, beginning at 11:30 A. M., in the case of John P. Sturniolo, Plaintiff against Dania Supply Company, a Florida corporation?

A. I am not sure about the date. I thought it was the case Mr. Cushman was trying to find out about Mr. Ford.

Q. Were there present at that time, Mr. Martin Von Zamft, your attorney—

A. Yes, sir.

203 Q. Together with Mr. Strickland and Mr. Cushman?

A. I believe there was—yes, sir.

Q. Were you under oath at that time?

A. I don't remember.

Q. Did you take an oath before you began answering questions that were asked you?

A. I am not certain about that at all.

Q. Do you recall having been propounded the question relative to the night or afternoon of March 26, 1947: (Reading)

"Q. You have given me the names of Jay Williams,

. . . .

206 DR. G. D. CONGER was called as a witness and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. Your name, please?

A. G. D. Conger.

Q. You are a physician?

A. Yes, sir.

Q. Where is your office?

A. 1600 N. W. 36th Street.

Q. On or about the 25th day of March, 1947, did you have occasion to examine Mr. Chester Robinson?

A. I did.

Q. Where was that examination conducted?

A. At my office.

Q. Will you state what that examination disclosed as to evidences of physical injury, if any?

A. I noticed blue discolorations of his shoulders, hips and thighs.

Q. Could you, from the nature of those, come to any conclusion as to what sort of instrument had caused those bruises?

Mr. CUSHMAN: I object to the question, if the Court please, on the grounds it is incompetent—

207 The COURT: Objection over-ruled.

By Mr. BOTTS:

Q. Go ahead.

A. That would be hard to say. A bruise from different instruments could cause that.

Q. And you wouldn't be able to tell what kind of instrument it was?

A. No, sir.

Mr. BOTTS: That is all.

Mr. CUSHMAN: No questions.

(Witness excused.)

MRS. JOHN P. STURNIOLO was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. Your name is Mrs. John P. Sturniolo?

A. That is right.

Q. You are the wife of the witness who just left the stand a few moments ago?

A. Yes, sir.

Q. Mrs. Sturniolo, did you have occasion to examine your husband's body about the latter part of March, 1947, and subsequent to the 26th day of March, for observable indications of injuries of any character?

208 A. Yes, sir.

Q. Will you state where that examination took place?

A. In my home.

Q. And what did you observe in that regard?

A. His upper arms and his back was very badly bruised.

Q. Did you observe those bruises from time to time afterwards? I mean, more than one time?

A. Yes—I had two occasions.

Q. I will ask you if there was any discoloration incident to those bruises?

A. Yes, sir.

Mr. BOTTS: That is all.

Cross Examination.

By Mr. CUSHMAN:

Q. Give me the date, please ma'am, when you say you saw any discolored areas.

A. March 28th.

Q. March 28, 1947?

A. That is right.

Q. Where were any discolored areas at that time, please, ma'am?

A. On his upper arms and his back.

Q. You knew that a picture had been taken of Mr. Sturniolo's back on March 31, 1947, did you not?

A. Yes, sir.

209 Q. And when was the second time you say you made any examination?

A. My husband had been beat previous to the March 28th beating.

Q. Just tell me when.

A. I saw him—March 29th is when I saw the discolorations.

Q. Where?

A. Up at the city jail.

Q. March 29th, and what was the other date you gave me a minute ago?

A. March 28th was when he was beaten.

Q. I am talking about the times you say you made examinations—March 28th and what other date?

A. March 27th.

Mr. CUSHMAN: That is all.

(Witness excused.)

HENRY B. GIROUX was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. State your name, please.

A. Henry B. Giroux.

Q. Where do you live?

210 A. At the present, Jacksonville, Florida.

Q. How are you presently employed?

A. I go to watchmaker school under the G.I. Bill of Rights.

Q. How long were you in the armed services?

A. About three years and three months. I was discharged from the hospital in Key West.

Q. Where did you perform your services?

A. Most of my services were in the States.

Q. In March of 1947 by whom were you employed?

A. Continental Detective Bureau, sir.

Q. Who was the head of that organization?

A. Chief Williams.

Q. Do you see the gentleman in the room?

A. Oh, yes—right straight through there (pointing.)

Q. Mr. Giroux, were you in any way connected with an investigation seeking to develop whether or not there had been any improprietics by the employees of the Lindsley Lumber Company?

A. Yes, sir.

Q. About when did you begin your work in that connection, as near as you can recall?

A. October of—

Q. I mean with reference to the Lindsley Lumber Company.

A. Two months prior to these beatings.

211 Q. You were a defendant in a companion indictment to this one, were you not?

A. Yes, sir.

Q. What disposition has been made of that?

A. I pleaded guilty to being there.

Mr. CUSHMAN: I ask the reporter to read the answer back.

(Answer read by reporter.)

By Mr. BOTTS:

Q. By whom were you first assigned to make this investigation?

A. Chief Williams.

Q. And just what kind of work did you do in connection with that assignment?

A. I was doing labor work under cover. I was supposed to report any discrepancies in the lumber company, such as stealing. That is what they were primarily interested in.

Q. Did you see the witness who just left the stand—Mr. Sturniolo?

A. Yes, sir. I didn't talk to him. I just came right from over in the office over there.

Q. Do you know Mr. John Sturniolo?

A. Yes, sir.

Q. Do you know Chester Robinson?

A. Yes, sir.

212 Q. Do you know Henry Priest?

A. Yes, sir.

Q. Do you know Frank J. Purnell, Jr.?

A. Yes, sir.

Q. Do you know where the small building is on the property of the Lindsley Lumber Company, about NW 17th Avenue, and 38th Street, that was sometimes used for painting display signs?

A. Yes, sir.

Q. Were you in that structure on the afternoon of March 26th, 1947, when Mr. Sturniolo was in there?

A. Yes, sir.

Q. I will ask you to state who else was in there on that day—the 26th. Please distinguish that from the 28th and try to distinguish if there was a difference.

A. When Mr. Sturniolo was there, Chief Williams wanted Detective Ford to be present, and no questioning took place unless he was there. He was there and also Lt. Perry and

also Mr. Bombaci and also Mr. Yuhas. Mr. Yuhas was also present at all these times if any questioning took place.

Mr. FLOYD: I didn't get those names.

The COURT: Repeat them.

The Witness: Chief Williams, Lt. Perry, Detective Ford, Bombaci and Mr. Yuhas.

By Mr. BOTTS:

213 Q. You are sure about Detective Ford?

A. Detective Ford was assigned to the case because everything had to be legal, and he was there at all questionings.

Q. I am referring still to the 26th, and I will ask you what kind of equipment or furnishings were in that room?

A. It was just a shack, and the Chief had blacked the windows and such as that so on one could look in, and he thought someone would try to come in and—

Mr. CUSHMAN: May I ask the witness to answer the questions and not express his own opinions.

By Mr. BOTTS:

Q. Proceed, Mr. Giroux.

A. Chief Williams arranged the shack so on one could see in. He also placed a bright light over there and placed a stool over there where they were going to sit, and I sat over there with the records to take testimony to whatever they said.

Q. You said there was a bright light there with a chair underneath it?

A. Yes, sir.

Q. Was that a drop light or a spotlight?

A. Just a hanging light. It was suspended from the ceiling.

214 Q. Do you know how bright the globe was on it?

A. I am not certain just how bright it was. It was plenty bright because they had to look up in there.

Q. There was a chair sitting under the light? You said you had some records. Were you seated or standing?

A. Seated.

Q. Was there a table there, or just where did you keep the records?

A. Over in the corner, there was a little more or less makeshift desk, and I had these reports of what they had done and I would read it off to them.

Q. State in your own words what took place in there that first day when Mr. Sturniolo was there.

A. Mr. Sturniolo was brought over to the yard over there and taken in the shack. And the Chief gave orders that no one was to enter while the questioning was going on. And I read off a report that the Chief had of what Sturniolo was supposed to have taken from the lumber yard. And the Chief and Mr. Yuhas promised Sturniolo that if he would tell where the things were he had taken and tell them who the ring leader was, they would not prosecute him. Of course, he would lose his job and he would have to pay for anything he couldn't give back.

Sturniolo at first denied this and that and finally he gave an itemized list of what he had taken but the Chief
215 wasn't satisfied. He thought there was more. He wanted to know who the ring leader was and he started beating him up. They had an instrument about this long (indicating).

Q. Will you indicate in inches how long it was? A

A. About twelve inches long.

Q. Go ahead and describe it.

A. This instrument that the Chief brought in there, I asked him who it belonged to and he said Detective Ford. I didn't see Detective Ford give it to him, but later I saw him give it to Detective Ford and tell him, "This is part of your equipment." It was about twelve inches long and it was covered with leather and it had a big seam on it. And the Chief said, "As long as you hit a man not with the seam, it wouldn't leave a mark." And he said you could beat a man half to death and not leave a mark.

He knocked Sturniolo off the chair I don't know how many times, and he hit him in the stomach and back and in the neck I don't know how many times. Finally he told Sturniolo, "You are free to go. I could give you three or five years but I am going to let you go." So they let Sturniolo go.

Q. Do you know Mr. Priest?

A. Yes, sir.

Q. Were you ever present when he was being questioned in the shack?

A. Yes, sir.

216 Q. Tell about that.

A. Mr. Priest was brought in there and he said he was a sick man; that he was under a doctor's care, and he didn't receive anywhere near the beating these other fellows did. He was forced to look up in the lights and he had to take his glasses off. In shoving him around like the Chief

did, he was afraid he might break the glasses. He couldn't get nothing out of Priest, so they took him out and handcuffed him to the car sitting outside the shack there. Priest was later called back, and the second time they called Priest in about it, he told about Sturniolo. There was a couple of boards difference, I think, and so Priest told on Sturniolo and said he had taken this and that and the other thing. And Priest gave us a list of the other things he had taken, and each time the Chief would hit him, he would remember something else.

Q. How many times did the Chief hit Priest?

A. Too numerous to mention, sir.

Q. What did he use to hit him with?

A. He most generally used his fist, and he would take his hand and hold it like that (indicating) and hit him in the back of his neck.

Q. Did he use this leather covered instrument that you recall on Mr. Priest?

A. No, sir, not that I recall.

217 Q. Where were you during this time?

A. Sitting there taking whatever they said.

Q. I will ask you if you saw anyone besides Mr. Williams strike Priest?

A. Mr. Bombaci just once, but he didn't hurt him.

Q. How did that occur that Mr. Bombaci happened to hit him?

A. The Chief ordered Bombaci to question him, and he hollered at him a couple of times and pushed him, and of course Priest fell off the chair, but it didn't hurt him to my knowledge, unless it was an internal injury. But it was more or less that he just lost his balance and fell off the chair. And Mr. Bombaci was doing that at the Chief's request.

Q. I will ask you whether or not you ever had any physical contact with Mr. Priest of any kind and if so, describe it.

A. Once they made Mr. Priest stand up, and he told us to be on our guard, and he shoved him up against me as hard as he could, and I thought he was going to knock me out of the chair, and I just pushed him away from me. I was afraid I was going to get knocked off the stool.

Q. Did you ever strike Priest?

A. No, sir.

Q. Did you ever strike any of these men?

218 A. No, sir, I don't believe in that.

Q. Tell me about Mr. Priest being required to look up at this light.

A. He claims he was blind; that he couldn't see. And he would hold his head down and he blinked his eyes all the time. And we had his glasses laying up there. And the Chief told him to take his glasses off, and we laid them up there so they wouldn't break.

Q. Purnell—were you present when he was questioned in the shack?

A. Yes, sir.

Q. Tell me about that.

A. Mr. Purnell was called in and I told Chief at the time I didn't see any reason why we should call him in because we didn't have anything on him. But the Chief said, "Yeah, but he looks guilty to me."

So he called him in there and questioned him and he said he didn't take anything. The Chief wasn't satisfied and he started beating him, socked him and hit him. He made him look up in the light and hit him off the stool. He would take his fist again and hit him in the stomach.

Q. Did he use the little leather covered instrument?

A. Yes, sir. He had a couple of pieces of wood in there. The thing was very hard, and he would use that for effect, he said. He would take it and try to scare them and
219 and he would ram it into their stomach. And he knocked Purnell in the stomach with it. And Purnell kept saying, "I didn't take anything." The Chief said, "You needn't worry about anything. We are keeping you from your wife." And he said, "You will be paid for this time, isn't that right, Mr. Yuhas?" And Mr. Yuhas would say, "That is right." And they didn't have any proof he took anything.

Q. How about Robinson—were you present when he was in the shack?

A. He took a terrific beating. He took one of the worst beatings of all of them. The Chief wasn't satisfied and he just beat him and hit him, and the perspiration was just running off Mr. Williams, and he said, "Boy, this guy is about to wear me out." And every time he would go near, he would wallop him and sock him with this instrument. Detective Ford never hit anyone, but he was present at all times, and naturally I thought everytime everything was legal. And he says, "Come on." And Robinson just kind of—from looking up in that light, I guess he couldn't see him—and he acted a little indifferent. And Detective Ford said, "Tell me or I will shuck your teeth like an ear of corn." And he says one time to the Chief, "Take it easy. You will kill that guy." And the Chief says, "No, he wants

to be beaten." And he would walk in front of him
220 and say, "You like me, don't you?" And hit him, and he said, "Yes, sir, I do."

Finally Robinson confessed. After the beating, I don't know whether the man knew what he was talking about or not. And everything they said, he would say, "Yes". It didn't make sense what he was saying.

Q. Did you go to Robinson's or Sturniolo's home when they went there and brought them down on the night of the 28th?

A. No, sir, I didn't go.

Q. Did Mr. Williams ever tell you why he was doing all these things and who had employed him? A. Roc Lindsley is the one? I says, "Who is the man that is actually behind this?"

Mr. Roberts: Who is this you had conversations with?

The Witness: Chief Williams. He said that Roc Lindsley and the Lindsley Lumber Company, had hired his agency, Continental Detective Bureau—because I was present—and he said Mr. Yuhas was designated by Roc Lindsley. I don't know whether that is his name or not, but that is what they called him. He designated Mr. Yuhas to take charge of all the investigations and see that anything Mr. Williams wanted he could get. It was Mr. Yuhas they said made arrangements for that shack to be used for that purpose.

By Mr. Botts:

221 Q. Was Mr. Yuhas present at all times when the beatings were going on?

A. Yes, sir. On one occasion Mr. Yuhas looked at me and I looked at him, and it was distasteful to both of us. And he says, "Is this necessary?" And I said, "I don't know." And the Chief said, "It is all part of the interrogation. Some of them you have to beat up and some you don't."

Q. Did you hear Mr. Yuhas make any statement as to why he was there?

A. Chief Williams wanted him present at all times. It was on their property and he wanted to see that it met with the approval of the company, and they didn't want to do anything wrong. He told me that is why he had him there.

Mr. Botts: You may examine.

Cross Examination.

By Mr. CUSHMAN:

Q. Mr. Giroux, did you have a number as operator or agent?

A. That is right.

Q. Number 7, wasn't it?

A. That is right.

Q. Did you ever make any reports in connection with this matter?

A. Yes, sir.

Q. Would you recognize one if I showed it to you?

222 A. Yes, sir.

Q. Here is a report dated March 18, 1947. That is a copy of a report made by you, isn't it?

A. That is right.

Mr. CUSHMAN: Mark this, please. We will offer it in evidence.

Mr. BOTTS: Let me see it.

By Mr. CUSHMAN:

Q. I will ask you to look at another one I hand you dated March 27, 1947, and ask you if that is a report made by you?

A. That is right. I was ordered to write this though, sir.

Q. You wrote it, did you not?

A. It is not my opinion.

Q. Did you write it?

A. Yes, sir. He told me to write it, and then he had me sign my name to it.

Q. You submitted it as your report, didn't you?

A. Not as my opinion, but what he wanted.

Q. You submitted it, did you not?

A. Under orders.

Q. How about this one dated March 28, 1947? Is that a report made by you?

A. I made that report as ordered.

223 Mr. CUSHMAN: We offer the three reports.

Mr. BOTTS: I would like to have an opportunity to read them.

By Mr. CUSHMAN:

Q. Mr. Giroux, you said you had pleaded guilty to being there?

A. Yes, sir.

Q. You haven't pleaded guilty to being in a conspiracy to deprive anyone of their civil rights, have you?

A. I pleaded guilty to being there.

Q. Have you pleaded guilty to beating anyone?
A. No, sir.
Q. You didn't beat anyone, did you?
A. No, sir.
Q. As a matter of fact, you know you pleaded guilty to Counts Two, Four, Six and Eight, did you not?
A. I don't recall the numbers of them, sir.
Q. You don't know what Counts you pled guilty to?
A. Yes, sir. I don't remember the numbers of the Counts but I understand the meaning. I was given the opportunity to read them thoroughly.
Q. Nevertheless, you pleaded guilty to being there, and that is all you pleaded guilty to?
A. And not stopping it. I should have stopped it.
Q. You did not beat anybody, you say?
224 A. No.
Q. At all?
A. No.
Q. You said Ford didn't beat anyone at all, is that correct?
A. That is correct.
Q. Did Perry beat anyone at all?
A. No.
Q. Perry didn't beat anyone at all?
A. No.
Q. You were there all the time at all the interviews?
A. Yes, sir.
Q. You are positive about that?
A. Positive.
Q. Bombaci didn't beat anyone?
A. Only Mr. Priest. He pushed him around. Mr. Bombaci at that time was in a cast. He wasn't physically able to beat anyone.
Q. He was kind of disabled?
A. I believe his army connected service, and I didn't ask to examine the man thoroughly. That is what he told me and I know from his actions he was not capable of doing that.
Q. So as we understand each other, the only one
225 you claim beat anybody except Williams was Bombaci, and he beat somebody once, is that your testimony?
A. Yes.
Q. Who did Bombaci beat?
A. Priest.

Q. What day was that on, please sir?

A. I don't want to get confused ,about the dates. It was the second time they brought Mr. Priest in.

Q. Did they bring Mr. Priest in on two different days?

A. No, sir. They handcuffed him to the car after they questioned him first, and they brought him in another time.

Q. All on the same day?

A. Yes, sir.

Q. How did it come about? You say Bombaci laid a hand on Priest?

A. The Chief was always ordering someone to take over. He ordered Mr. Perry to take over once, but Mr. Perry didn't want a part in it. He ordered Bombaci to take over and that was the occasion when he pushed him and Bombaci pushed him off the stool. The Chief ordered him to do that.

Q. Bombaci said he didn't want to have any part of it?

A. He didn't want to beat anyone. He didn't approve of it, you could see.

Q. You didn't want to beat anybody, did you?

A. No, sir. As a matter of fact, Mr. Williams—I
226 asked the Lieutenant, "Is there something you can do, Lt. Perry?" And he said, "There is no use talking about it. He will beat him all the more."

Q. Perry didn't want to beat anybody?

A. No, sir.

Q. Ford didn't want to beat anybody?

A. No, sir.

Q. And nobody did beat anyone except Williams, and Bombaci the one time you have told us about?

A. That is right.

Q. Do you know Emmett Kehoe, Assistant County Solicitor of Dade County?

A. Yes, sir.

Q. Do you know Wallace Maer?

A. The only one I know is the one that is in the Western Union Building.

Q. You remember going up to the office of the County Solicitor on March 31, 1947, don't you?

A. I went up to the County Solicitor's office.

Q. When you went up there you were asked about any beatings, weren't you?

A. Yes, sir.

Q. Who asked you about beatings up there? Was it Maer or was it Keyhoe? Which one?

A. I am not sure who it was.

227 Q. You remember that one or the other did?

A. Yes, sir. I remember it very well.

Q. You knew that Kehoe and Maer, whoever it was, were there as officers of the State of Florida, did you not?

A. I knew that, sir.

Q. When you went there, you were sworn as a witness, were you not?

A. Yes, sir.

Q. Do you know what it means to take an oath?

A. I do, and I also know what it means to have your head knocked off, too. I have been told too many times if I didn't do what I was told to do, something would happen.

Q. Who told you that?

A. Chief Williams.

Q. No one else?

A. No.

Q. On that occasion you were examined by the Assistant County Solicitor of Dade County, were you not?

A. That is right.

Q. Under oath?

A. That is right—under oath.

Q. Who else was in the office?

A. Mr. Bombaci, Chief Williams, Mr. Yuhas—all the men concerned in this here, and they all lied. What chance would I have.

228 Q. Are you telling the truth now?

A. I am positive I am telling the truth.

Q. You were sworn in this case?

A. I know if I pleaded not guilty with the rest of the, I could go free.

Q. And who told you that?

A. No one had to tell me, because they all lied up there in the County Solicitor's office. And I know they would lie again.

Q. I will ask you if you were asked these questions? (Reading):

"Q. Your name is Henry B. Giroux. You are employed by the Continental Detective Bureau?

"A. Yes, sir.

"Q. You are assisting in this Investigation in which we have been interrogating the witnesses?"

And your answer was, "Yes, sir."

A. I don't remember the exact questions and words in that particular instance.

Q. Let me ask if you remember this question and answer. I will ask you if this question was asked you. (Reading):

"Q. Did you beat Sturniolo up?"

And your answer was "No, sir."

A. Yes, sir. That is the truth. Yes.

229 (Reading)

"Q. Did you ever lay a hand on him? In violence?"

And our answer, "No, sir." Is that the answer you gave?

A. Yes, sir.

"Q. Did you threaten him?"

And your answer, "No, sir." Is that the question and answer?

A. That is right.

Q. And the next question:

"Q. Did you threaten, lay a hand on in violence or beat up any of these other suspects?"

Was that question asked you?

A. I don't remember the questions they asked me up up there.

Q. Were you asked if anyone had been beaten?

A. I said, "No, sir," the same as they did.

Q. You said no one had been beaten?

A. Yes, sir. I was ordered to do that before I went up there.

Q. Do you remember the question: (Reading)

"Q. Did you see anybody else do that?"

And you said, "No, sir."

A. If they asked me that question, I probably said, "No, sir." The Chief said he had made all the arrangements.

Q. Let me ask you if you gave this answer also.

230 (Reading):

"A. If anyone would have done that I wouldn't have had any part of it. That's the reason I know it didn't take place. We don't handle our investigations that way."

Did you give that answer?

A. Very similar. I remember, because that was quoted to me to say in the event they asked me.

Q. I understand you to say, however, that you did say very definitely, when they were examining you at the County Solicitor's office, that you and nobody else beat anyone of these suspects. Is that right?

A. I don't remember if that is the exact words or not, but I was ordered to say "No" to all questions.

Q. What did you say?

A. "No."

Q. In other words, you said that nobody had been beaten and you had beaten nobody and nobody else did, is that right?

A. That is right, sir, and it was a lie.

Q. After that, and that was on the 31st of March, 1947, how long did you stay in Miami?

A. Just long enough to get some money to get away from here.

Q. Where did you go?

A. Up to Tennessee.

231 Q. How long did you stay there?

A. I would say a couple of weeks.

Q. While you were up there in Tennessee, did you see Williams or Bombaci or Perry or Ford or Yuhas?

A. No, sir, I stayed out of their way.

Q. Where did you go next?

A. To Texas.

Q. Where in Texas.

A. This involves my family.

Q. You can tell me the town.

A. Huntsville, Texas.

Q. While you were there you never saw Perry or Williams or Bombaci or Ford, did you?

A. No, sir.

Q. You didn't hear from any of them?

A. I didn't contact them, sir.

Q. I said you didn't hear from them, did you?

A. No, sir.

Q. When did you leave Texas, please sir?

A. I believe the middle of June, and come back to Tennessee.

Q. To the same place you had been before?

A. No, sir.

Q. Did you see Williams or Perry or Bombaci or Ford or anybody else at any time after you say you left

232 Miami as soon as you could get out?

A. No, sir.

Q. When did you see them for the first time after that?

A. I seen Mr. Bombaci yesterday and this is the first time I have seen Williams. I saw Mr. Perry for the first time when he came by the door.

Q. Nobody has attempted to talk to you, have they?

A. I have stayed pretty secluded. I don't see how they could.

Q. No one has attempted to talk to you, have they?

A. Not to my knowledge.

Q. Where have you been secluded?

A. I stay out on Biscayne Boulevard. I have been working in Jacksonville, Florida.

Q. While this trial has been going on.

A. Out on Biscayne Boulevard. Oh, I have been sitting over in the District Attorney's office.

Q. You never did go back to the office of the County Solicitor and tell the County Solicitor or anybody else that you had testified untruthfully under oath before the County Solicitor because you had to, did you?

A. No, sir.

Q. You never have gone back and attempted to make any explanation to the County Solicitor's office at all, have you?

233 A. No, sir. I was ordered here by Chief Williams to be his chief witness; that was primarily my reason for leaving. I know I perjured myself. I had a very big argument with my wife about it and everything else. I don't believe in that. And I felt I had no other choice.

Q. You knew when you were called up there to the County Solicitor's office that the reason the questions were being asked was because the County Solicitor wanted to know if any confessions that were obtained were obtained freely and voluntarily, isn't that right?

A. Previously, when we were up to the Western Union Building, that was Mr. Williams' attorney, the Assistant County Solicitor, and he said, "You know Mr. Williams didn't beat anybody, did he?" "Did he?" That was the Assistant County Solicitor. I was ordered to say different.

Q. What did you say?

A. I said, "No, sir."

Q. You knew when you went up to the County Solicitor's office that the County Solicitor was asking you whether anyone had been beaten because they wanted to know whether the confessions were obtained freely and voluntarily, isn't that true?

A. I didn't know what was going to happen up there until we got up to the building. Before we went in, that was when the Chief told me what to say.

234 Q. Weren't you told up there in the County Solicitor's office the reason you were being asked if anyone was beaten was because they wanted to know if the confessions were obtained freely and voluntarily?

A. I don't recall that.

Q. Don't you know why the questions were asked and why a record was made of your testimony?

A. It was my understanding when I went up there, that everything was taken care of.

Q. Didn't you know when you went up there that was the reason you were examined and a record made of your testimony?

A. It was my understanding it was a matter of record for us to go up there.

Q. Was anybody else questioned besides Sturniolo, Priest, Purnell and Robinson?

A. Yes, sir.

Q. Who else?

A. I don't recall their names.

Q. They weren't beaten were they?

A. We wouldn't have nothing on them. We didn't have nothing on them.

Q. Were they beaten or not?

A. One fellow, I don't know his name, but he told his sister before he left; he said he told his sister he was wearing these clothes, and that if he came back disheveled she would know something had happened. The Chief shoved him around a little bit, and I think he was afraid on that account—because of what the man told his sister before he left.

Q. Tell me, please sir, was anybody else beaten?

A. He was not beaten, but he was brought over there, and I don't know whether he was a shipping clerk or what. I can't think of his name, but that is where the Chief mashed his foot down. And he says, "Be careful, that is my sore foot." And the Chief said, "Which one?" And the guy showed him and he mashed down on it. And the guy cried over it. We didn't have nothing on him so he just let him go.

Q. Is that the only extent to which anybody was beaten, except Robinson, Sturniolo, Priest and Purnell?

A. That is right. Sturniolo, Priest, Robinson and Purnell are the four that were beaten badly. And this one fellow was roughed up a little bit but he was not beaten outside of his foot, where he mashed on it.

Q. You never had any kind of understanding or agreement with Williams that anybody was going to be beat up before you went out there, did you?

A. I had never been present at an interrogation, and I was called or classified as a student. And we were told that the next time this came up, we would know how to do

it. And also that Mr. Ford would be present to make
236 it legal, and Mr. Yuhas would be there so there would be no chance for mistakes.

Q. You didn't want to do anything wrong, did you?

A. I don't claim to be perfect.

Q. I said you didn't want to do anything wrong, did you?

A. Beating them? No, sir.

Q. Beating or anything else—now did you?

A. I just wanted—I thought at that time I wanted to go in the detective business. I got sick of it after those beatings and anything I did there, I thought was perfectly legal.

Q. But you didn't have any understanding that any beating was going to be done before you went out there, did you?

A. Chief Williams told me when I left the office—I can't understand where my mind was. He had me take two pistols and a shot gun down the street. He said it was going to be a big case—big stuff. And here I take those guns and go out with them. And he said, "There will be somebody busting in here to get those men to keep us from questioning them." He tried to make out it was a big issue, and somebody was going to break in there. I had orders to be on my guard at all moments, and to take no chance of any kind; under no circumstances whatever was I to
237 open that door unless they identified themselves who it was.

The Court: I will adjourn court now until 2 o'clock.

(Whereupon, at 12:30 o'clock, court was adjourned to 2 o'clock, p. m.)

238 After Recess

(Court reconvened at 2 o'clock, p. m.)

Henry B. Giroux resumed the stand and testified as follows:

The Court: I might ask you if there is an objection to those documents.

Mr. Botts: Yes, sir. I might suggest while we are waiting that your Honor read them.

The Court: All right. Let me see them. State your objection.

Mr. Botts: First, that the documents are irrelevant, immaterial and incompetent; second, that they do not tend

to illustrate any of the pertinent issues in this case; third, that no foundation was laid or attempted to be laid for the use of these documents.

The COURT: Over-ruled. It is the Court's opinion that they are proper on cross examination.

(Whereupon, the documents above-referred to were marked Defendant's Exhibits Nos. 6, 7 and 8, and received in evidence.)

Mr. CUSHMAN: Gentlemen of the jury, I will read these to you and pass them to you. The only reason for reading them is because they are too long to make it practical for each one of you to read them.

The first one is (Reading):

239 "CONFIDENTIAL REPORT, LINDSLEY LUMBER COMPANY, Agent No. 7, Special Report, March 18, 1947:

9.00 Agent No. 7 is at 17th Ave. yard of the Lindsley Lumber Company waiting for windows to be ploughed and goes around yard looking for possibilities to add to our information to date. Agent observes movements of man named Ches. Robinson, who Agent finds is Salesman. Agent finds Robinson loading car with supplies and finds nothing unusual in loading, so Agent follows Robinson around near back and this man hands Robinson money and Mr. Robinson puts it in his pocket. Agent is positive no ticket was made for supplies. Robinson approached another customer without even going inside. This fellow customer seemed too friendly with Robinson. Agent was hampered in this investigation and could only follow Robinson the one time; as Agent started to watch Robinson and second customer, Truck Driver Agent was with (named Mac, Truck No. 85) was called over the speaker, and Agent had to tell him as he is hard of hearing. Short time later we left yard.

THAT IS ALL.
Agent No. 7

REMARKS: Agent knows Robinson is guilty now. Amount of cash Agent seen change hands and Robinson stuck in his pocket. Agent is not certain as Robinson pocketed it fast, but AGENT DID SEE THE MONEY FROM CUSTOMER PUT IN ROBINSON'S POCKET BY ROBINSON AFTER CUSTOMER HANDED IT TO HIM.

Agent No. 7."
(Ends reading)

240 Mr. CUSHMAN: That is one of the reports you identified, is it not?

The WITNESS: That is my report but it has been doctored up a little bit.

Mr. CUSHMAN: The next one, Defendant's Exhibit No. 7, reads: (Reading)

"CONFIDENTIAL REPORT, LINDSLEY LUMBER COMPANY, Agent No. 7, March 27, 1947.

Chief and Agents arrive at Lindsley Lumber Company's 17th Avenue yard and contact Mr. Yuhas whose untiring efforts to aid Chief and Agents is again put in force as he readily gets Mr. Priest for questioning by Chief and Agents.

Priest snivels and complains of all his tough breaks and declares himself to have no knowledge of any unethical procedure of handling building materials for Lindsley's. Confronted with facts Chief presents, Priest threatens Chief and Agents bodily harm by friends of his and tells Chief he has connections and curses at Chief and Agents whenever they ask questions that Priest claims damages his character. After 6 hours, Priest still persists in his innocence and repeatedly threatens Chief and Agents for even trying to implicate him.

Chief asks Priest if he will wait outside as he would like to talk to him again.

Mr. Yuhas tells Mr. Hatfield that Chief and Agents would like to ask him a few questions and he tells that he has no knowledge of any misdoings at Lindsley's and
241 sticks to this opinion, but after having explained to him the purpose and reasons for our selecting him for questioning, he fully realized his position could become less tense by co-operating with Chief and Agents in cleaning up the stealing. Hatfield gave statements and signed said statements stating that he had participated and was involved in stealing and also told of his stealing with Priest who had staunchly denied any stealing.

After calling in Priest and confronting him with Hatfield, Agent No. 7 read statements in presence of Hatfield and Priest. Then Priest admitted his constant lying and said he would try to tell us as accurately as possible the stealing he himself had done. Priest apologized to Chief and Agents for previous lies he persisted in telling. Priest very slowly told of stealing and selling, while Agent questioned Chief and Agents and Mr. Yuhas departed with truck following, Ben Buttrey following to Hatfield's home to get stolen lumber and building supplies.

After searching premises and loading of truck, Chief and Agents and Mr. Yuhas proceeded to give home ad-

dress of Priest and found he does not live with his wife at 653 N. W. 27th Street. Confronting Priest with findings, Priest states he lives with Mrs. Michalove at 2931 N. W. 39th Street. Chief, Agents and Mr. Yuhas questions Mrs. Michalove and she says Priest said he belonged to the Ku Klux Klan and threatened her life many times and stated he lived with her off and on. Confronted with this Priest said he knew the K. K. K. but did not belong
242 to it but would join if they wanted him to. After constant questioning and due to the slowness of his testimony as he was given plenty of time to think clearly, at 3.15 A. M. March 28th, Chief and Agents bid Mr. Yuhas good-night and took Priest to City jail, made statements and Chief after getting slip from Lt. Howard proceeded with ~~Agents~~ and Priest to 16th floor where he was booked.

THAT IS ALL

Agent No. 7." (Ends reading)

The last one reads: (Reading)

"CONFIDENTIAL REPORT, LINDSLEY LUMBER COMPANY, March 28, 1947, Agent No. 7.

Agent No. 7 reported with Chief and other Agents at Lindsley Lumber Company and contacted Mr. Yuhas, who informed us Mr. Robinson was absent for the day.

Agents then questioned Mr. Purnell at length and found his participation in stealing had been very minor and was released with certain stipulations attached, such as co-operating to the fullest extent of cleaning up this viscious epidemic of stealing. Mr. Cleighton was then questioned and stated he did not care what the others did and admitted that he cautioned Olson to be careful stealing paint, and with certain conditions he was released to resume his employment. Conditions were that he co-operate. Cleighton was off from work Friday and stated he was going
243 to help Olson and Paul all he could but Agents found he had done nothing but sit around the house and go out for drinks. He was picked up at his house.

On the second attempt, Robinson, who claimed to be off Friday on account of sickness, was picked up and questioned. Chief and Agents questioned Robinson at great length but after having contradicted himself so many times, his open and wholesale stealing was confessed to by him. Robinson said he sold $3,000.00 worth of Lindsley's Building supplies for half the selling price and Robinson

said he received $1,500.00 from the customers he sold the supplies to. These customers were friends of Robinson's and knew they were buying stolen property.

Mr. Sturniolo was picked up at his home and the Chief took a knife out of his hand and brought him in with Agents. Sturniolo claimed on questioning that he had also sold building materials that he stole from Lindsley's in conjunction with the supplies he had stolen and used at his home. Mr. Sturniolo gave a weak estimate of $300.00 worth of stolen building supplies.

Robinson and Sturniolo were taken to jail and booked.

THAT IS ALL
Agent No. 7

* * *

REMARKS: During all questioning, the careless
244 methods used in handling, loading and checking have been constantly used as the logical excuses for stealing. During questioning it is also stated that they are stealing at all yards and everyone knows it. Also from questioning, subjects say that if Lindsley's actually knew how much has been and still is being stolen, he probably would fall off his chair. Agent finds from questioning that subjects also have really turned out the work since finding Agents are at work but men say it will blow over after a while. Subjects also relate that a shopping service used by Wilmark is a known fact as far as conversation goes but the boys are smart and deal only with people they have dealt with over a period of time.

AGENT No. 7."

* * *

(Ends reading)

By Mr. CUSHMAN:

Q. Mr. Giroux, Mr. Priest stated that you had beat him. What about that?

A. I didn't beat him.

Q. Mr. Priest said Bombaci beat him. What about that?

A. He pushed him around. I wouldn't call it beating him.

Q. Mr. Priest said Mr. Perry beat him. What about that?

A. I didn't see Mr. Perry beat him.

Q. Were you there all the time?

245 A. I was there.

Q. Mr. Priest said Ford beat him. What about that?

A. No, sir.
Q. He didn't beat him?
A. That is right, sir.
Q. Did you see Perry beat Purnell?
A. No, sir.
Q. Were you there all the time?
A. Yes, sir.
Q. Did you see Bombaci beat Purnell?
A. No, sir.
Q. Did you see Ford beat Purnell?
A. No, sir.
Q. Were you there all the time?
A. Yes, sir.
Q. If any of them had beat these men, could you have seen it?
A. Yes, sir.
Q. Did Ford beat Robinson?
A. No, sir.
Q. Did Perry beat Robinson?
A. No, sir.
Q. Did Bombaci beat Robinson?
A. No, sir.
Q. Did you beat Robinson?
246 A. No, sir.
Q. Were you ever alone with Mr. Priest at any time?
A. No, sir.
Q. The reason I ask you is that Mr. Priest has testified that you stayed in the shed when everybody else went out to get a Coca-Cola and you stayed behind. Is that right or not?
A. No, sir.
Q. Do you know anything about everybody going out and leaving Priest alone in the cabin with anybody? Did anybody go out of the paint shed and leave him in there with you, Perry, or Bombaci or Ford or Williams?
A. I went out once for a Coca-Cola. We just all took off.
Q. Who took off.
A. Myself.
Q. You alone?
A. No, once Mr. Bombaci went out with me one time. The Chief would just tell us—
Q. There was no times, as I understand it, that you were left to guard Priest?
A. No, sir.
Mr. CUSHMAN: That is all.

Further Cross Examination.

By Mr. ROBERTS:

247 Q. Are you at present employed, Mr. Giroux?

A. Yes, sir.

Q. Where?

A. I am going to school for watch making.

Q. That is in Jacksonville?

A. Yes, sir.

Q. You stated that at one stage of the proceedings Mr. Yuhas made some remark to you about was this beating necessary, or words to that effect. Who was being questioned at that time?

A. Mr. Robinson.

Q. Who was the first person that was questioned out of the four? That is, Priest, Robinson, Sturniolo and Purnell?

A. I believe Sturniolo was the first one.

Q. Where were you and Mr. Yuhas when he made this remark?

A. I was standing right near the door to go out.

Q. And where was he?

A. He was standing over near Mr. Ford and Lt. Perry and of course the Chief was over with the man being questioned—Mr. Robinson.

Q. Was Yuhas over close by you at the time?

A. Yes, sir. It is—there is a little, like a desk there, and I was standing at the desk and Mr. Yuhas was standing right here (indicating).

Q. I believe you testified that Mr. Yuhas at no time ever struck anyone.

248 A. No, sir, he did not.

Q. Did he ever participate in the questioning of anyone to your knowledge?

A. Yes, he participated in the questioning.

Q. To what extent?

A. He wanted to know how much was taken and he asked them what the value would be. And he would ask them if they knew where it was. And he said they would like to recover it if they could, and whatever they returned, that would be all right. But what they didn't return, they would have to pay for. And outside of that, it was only minor.

Q. He was after getting as much of the lumber back for the company as he could and he wanted compensation for the balance which the men could not account for?

A. He said he would even give them time. He said they weren't interested in prosecuting the boys, and they didn't want to prosecute the boys. They were just interested in stopping stealing and recovering as much as they possibly could.

Q. That is about the gist of Mr. Yuhas's participation in the questioning?

A. As far as him actually questioning the men, yes, sir.

Q. Approximately how many other employees were involved, besides the four I have mentioned—Sturniolo, Robinson, Priest and Purnell?

A. You mean in this questioning?

249 Q. Yes.

A. There was, I believe, about four others.

Q. Did I understand you to say that you were working in the yard as an employee there?

A. I worked, not in the 17th Avenue yard. I worked in the Hollywood yard.

Q. You acted as if you were actually handling lumber but really your purpose was to see if the other employees were concealing lumber or carrying it away or stealing it?

A. That is right. I even unloaded carloads of cement.

Q. Incidentally, were any of these other four men who were questioned struck by anyone or beaten?

A. Only the one man, and I don't know his name. He wasn't struck, but he said, "Be careful of my foot", and that is where the Chief mashed down on it and the fellow cried about it.

Mr. Roberts: That is all.

Mr. Botts: Come down.

(Witness excused.)

A. R. Lindsley was called as a witness and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Botts:

Q. You are connected with the business operating—

250 The Court: Who is he?

Q. What is your name?

A. A. R. Lindsley.

Q. And you are connected with the business operating under the name of Lindsley Lumber Company?

A. I am.

Q. How long has that company been using that name?
A. About fourteen to sixteen years.
Q. What is the actual name of the corporation which operates under that name? As of the date when this occurrence took place?
A. Dania Supply Company.
Q. Your company caused this name Lindsley Lumber Company to be registered under the Fictitious Name Act, for the use of the Dania Supply Company—
Mr. Cushman: We object, because the Fictitious Name Act has no application except for individuals. It has no application to a corporation, because a corporation of necessity cannot operate or is not permitted to operate under a fictitious name.
The Court: He is being asked as a fact, whether he did register it. I will admit the question.
The Witness: I believe it was registered.
Mr. Botts: That is all.

251 Cross Examination.

By Mr. Roberts:
Q. Mr. Lindsley, to your knowledge, is there such a corporation in existence as one under the name of Lindsley Lumber Company?
A. No.
Mr. Roberts: That is all.

Re-direct Examination.

By Mr. Botts:
Q. It is so listed on the bill heads, is it not?
Mr. Roberts: We object. That is immaterial, irrelevant and incompetent.
The Court: Overruled.
The Witness: I believe it is listed as Lindsley Lumber Company, Allapattah Yard. Our bank account is designated Dania Supply Company.
Mr. Botts: But when you sell material, the head of the bill is Lindsley Lumber Company?
The Witness: Yes, sir.
Mr. Roberts: It does not say whether it is incorporated or not, does it?
The Witness: No, it does not.
Mr. Botts: That is all.
252 (Witness excused.)

TOBIAS MATTHEWS was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOTTS:

Q. State your name, please.

A. Tobias Matthews.

Q. Your employment.

A. I am a special agent of the F. B. I.

Q. Did you occupy that position in March of 1947?

A. I did.

Q. Did you have occasion in your official capacity to make any investigation of the matter now on trial?

A. I did.

Q. I will ask you if in the course of that investigation if you talked to the defendant Williams?

A. I did.

Q. And to the defendant Perry?

A. I did.

Q. Did either or both of those men exhibit to you at that time special police officer cards?

Mr. CUSHMAN: I object to the question on the ground it is not a proper way to prove authority or a commission of any kind, and I respectfully submit that that is not competent evidence and there is nothing in the question
253 to indicate whether any such appointment, if any there was, was in force or effect at the time laid in the indictment.

The COURT: I over-rule the objection, but I will direct that the time of this be specified.

Mr. BOTTS: If the Court please, if they let the question be answered, the next qestaion will clear it up.

The COURT: But the time may have some bearing on its admissibility.

By Mr. BOTTS:

Q. Did these gentlemen exhibit you a special police card?

A. They both did.

The COURT: Who is that?

The WITNESS: Williams and Perry.

By Mr. BOTTS:

Q. Did you examine those cards?

A. I did.

Q. What was the date of issue?

A. January, 1947.

Q. And to what period did they run?

A. They ran until the last of June, 1947.

Q. Did those cards show from what authority they emanated?

A. The card indicated it was issued by the Director of Public Safety of the City of Miami and contained the signature—

254 Mr. Floyd: We wish to enter an objection on behalf of the defendant—the best evidence is the card itself.

The Court: Overruled. Proceed.

Q. Go ahead, Mr. Matthews.

A. The card indicates on the front of it that it was issued by the Director of Public Safety, and then above that it carries the name of the Chief of Police, and as well as I recall, both cards carried the name of Chief Mitchell, and another name, Dannier.

Q. Both cards did.

A. Yes, sir.

Mr. Borrs: That is all.

Cross Examination.

By Mr. Pruitt:

Q. I take it from your last answer that your recollection is not clear and certain as to the full contents of the card?

A. I am pretty sure that that is what the card carried.

Q. Is it not true that you have since personally made an investigation or a search of the Public Records of the police department of Miami for the purpose of verifying what you are now testifying to?

A. I did.

Q. And isn't it true that you could find no records to substantiate what you have just testified to?

255 A. I contacted Mr. Price, secretary to the Chief of Police and Mr. Price checked his records which are maintained in the office of the Chief of Police as to the issuance of these cards, and at that time Mr. Price found a record, a card four inches by five inches, indicating that a special police officer's card had been issued to Williams, Perry, Giroux. He at that time could not locate a card for Mr. Bombaci, but he stated to me, in explaining the absence of that card—

Mr. Cushman: May I respectfully suggest that the answer is not in answer to the question that was asked him.

The Court: I sustain the objection.

By Mr. PRUITT:

Q. Isn't it true that the only record that you have seen in furtherance of your investigation was one showing that this commission was issued in October of 1947 to Williams and the others?

A. To the best of my recollection, I cannot recall the date of the issuance. I can recall positively the date that the card was in effect as to Williams and Perry.

Q. The positive statement you make is based upon the card that you saw was shown to you and on no other documentary evidence or records that you have seen or examined? Is that true?

256 A. Yes, that is true. As to the card itself, that was presented to me when I talked to both of these gentlemen.

Q. And you at that time or any subsequent time, made no check of the authenticity of the card you say was exhibited to you?

A. I checked with Mr. Price, just as I previously stated, and he was maintaining in the office these other cards. And as well as I can recall, these cards, with the exception of Bombaci, indicated that special police officer cards had been issued to Williams, Perry and Giroux. The exact contents of those cards, I cannot recall.

Q. The record that you refer to as indicated being held by Mr. Price has never been examined by you, has it?

A. I looked at the card—yes, sir.

Q. When?

A. When I contacted Mr. Price on the first occasion.

Q. About when was that?

A. As well as I can recall, that was during May of 1947.

Q. Within the past few days, you have also made inquiry with reference to these records, haven't you?

A. I once asked Mr. Price to—in regard to the subpoena—to bring his records with him. I think I did ask him at that time if he still had the records and if he would bring the records when he was subpoenaed here.

Q. My question is, have you seen any records recently indicating that these men were special officers at the

257 time of this alleged offense.

A. I have seen the applications made.

Q. When?

A. I saw them today.

Q. Is that all the record you have seen; the application that was made?

A. I believe there was two cards—one for Mr. Perry and one for Mr. Williams.

Q. Those were applications?

A. The two cards, the personal data cards, as I understand it.

Mr. Pruitt: That is all.

Mr. Floyd: We reserve the right to cross examine him.

(Witness excused.)

Charles Price was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Botts:

Q. State your name, please.

A. Charles W. Price.

Q. How are you employed?

A. As administrative assistant to the Chief of Police.

258 Q. City of Miami?

A. Yes, sir.

Q. Do you have the personal records of Charles R. Ford, police officer?

A. Yes, sir.

Q. Are those the records you hold in your hand?

A. Yes, sir.

Q. Will you state when Mr. Ford entered the police service?

Mr. Cushman: I have no objection to the entire file going in evidence, but I don't think it is the place of the witness to state anything.

The Court: I don't quite follow you.

Mr. Cushman: I don't object to the entire file going in evidence.

Mr. Botts: I doubt if the police department would want their file tied up.

The Court: I will not require the Government to put in the whole file, if it does not want to. If you want to put it in, I will consider it.

By Mr. Botts:

Q. I will ask you if from these records, you can state what Mr. Ford's official status was with the Miami Police Department from March 26 to and including March 29, 1947.

Mr. CUSHMAN: I suggest the question should be if
259 the paper he has there contains any record that shows that, and if it does, let that be offered in evidence.

The COURT: The suggestion is over-ruled.

The WITNESS: Police Sgt. Charles Ford, having been appointed—

By Mr. BOTTS:

Q. Will the reporter read the question, please.

(Question read by reporter.)

A. He was—

Q. Can you state from the record what his status was? Answer yes or no.

A. He was a policeman.

Q. Was he a uniformed police, or a detective, plain clothes?

A. He was a uniformed police officer. However, his assignment was not that at the time. If you want me to clarify that—

Q. Do you have with you one of the so-called private police cards that are issued from time to time? Do you have a sample of that?

A. It is referred to as a special officer card.

Q. Is this document you have marked "Void", and which seems to be signed with the name of the head of the Chief of Police, is that a sample of the kind of card that is in force?

260 A. Yes, sir.

Q. Was that in force in March of 1947?

A. That similar card was the type of card used in 1947.

Mr. CUSHMAN: Was this card the card that was used in March, 1947, or not?

The WITNESS: The design of the card has since been changed.

Mr. CUSHMAN: Then that is not the exact copy of the card that was in use at that time, is that correct?

The WITNESS: Not the exact copy.

Mr. BOTTS: Is the substance of it, the printing and wording, is that the same?

Mr. CUSHMAN: I object to the question, because that would not render the offered exhibit admissible in any event. The answer to that question.

The COURT: I over-rule the objection. Answer the question.

The WITNESS: Yes, sir, it is.

Mr. Botts: We offer that in evidence as illustrating the character of card that was in use.

The Court: Not as being any card which was effective, but as a sample of the type of card that was used?

Mr. Botts: That's it.

The Court: Did I understand you to say that the
261 verbiage in this card is the same that was in use in March, 1947?

The Witness: Substantially the same, your Honor.

The Court: It may be admitted.

(Whereupon, the document above-referred to was marked Government's Exhibit No. 9 and received in evidence.)

By Mr. Botts:

Q. Mr. Price, I will ask you to state what records are kept of the various special police cards which are used? What kind of record is kept?

A. Upon application, an applicant is given a blank application form, which after execution, is considered by the Chief of Police. If approval is given, after he has been duly processed, which includes finger printing he is issued a card of the type which you have there. The application goes into the file under a number, and the record card is made which is filed in an alphabetical index.

Q. For what period of time are these police cards issued?

A. The practice is to issue them for a term usually from six months to a year.

Q. Are there a large or small number of these special cards issued?

A. There are a large number.

262 Q. In March of 1947 how many of those cards do you suppose were current? Your best recollection?

A. I would estimate somewhere over two hundred.

Q. I will ask you what permanent record exists in the Miami Police Department with respect to cards which were current on or during March of 1947?

A. The only permanent record is the book in which the special officer, at the time he receives his appointment, is sworn in.

Q. Do you have that book with you?

A. Yes, sir.

Q. Let me ask you this. If a man is issued a special police card and takes the oath, when that card is renewed does he take another oath?

A. No, sir.

Q. The record that you have I understood you to say, is the record where these persons to whom these cards were issued takes the oath?

A. I might say it is only the current book. The books prior to the date of this book would be very difficult to locate, and not knowing until very, very recently that this was desired, I was unable to make any search to locate any previous books.

Q. Does the recipient of one of these cards—was it the practice to have him sign this oath book or was that
263 a clerical memorandum made by some clerk?

Mr. FLOYD: We object to this line of questioning. This is a Government witness, and Mr. Botts is putting every bit of evidence in his mouth.

The COURT: Objection over-ruled. Proceed.

By Mr. BOTTS:

Q. Will the reporter read the question.

(Question read by reporter.)

A. The book is prepared with a large number of oaths to be administered at the time the man was sworn in and signed by him, with the date and showing the notarization of the oath.

Q. Do you have any card record or memorandum with reference to Jay Williams?

A. I have a record card.

Q. May I see that record card? This is from the official files of the Police Department, isn't it?

A. Yes, sir.

Q. Mr. Price, I will ask you from this card, if you can state what the record shows when Mr. Jay Williams first took the oath as an officer?

Mr. CUSHMAN: I respectfully submit that the card speaks for itself, and I object to any statement, except to read from the face of the record.

The COURT: Very well. You may read the record.

By Mr. BOTTS:

264 Q. Read it, Mr. Price.

A. This card is a special officer record card in the name of Jay G. Williams; address, 9935 Little River Drive; telephone, 3-1336; color-sex—white male, height, 6' 2"; weight, 200; hair, black; employed by Continental Detective Bureau (self-owner); address, 201 Congress Building, crossed out to read 9935 Little River Drive; tele-

phone 3-1336 or 9-5097; employed as (blank); Card No. AG —288, BCI No. (blank); valid for—10/8/47 to 1/15/48; Oath, 8/30/44.

Q. What does that memorandum "Oath, 8/30/44"—what does that indicate in the course of the—

Mr. CUSHMAN: I object to the question.

The COURT: Objection is over-ruled. Proceed.

The WITNESS: That indicates on August 30, 1944, the oath was taken by Jay G. Williams, swearing him in as a special officer.

By Mr. BOTTS:

Q. After a person had once taken the oath and qualified, what is the custom with reference to any formality required in issuing renewal cards?

Mr. CUSHMAN: I object to the question because the matter of issuing cards at all is regulated and governed by the Charter of the City of Miami, which is the law—

The COURT: Over-ruled. Proceed.

By Mr. BOTTS:

265 Q. Answer the question, Mr. Price.

A. When a special officer had once taken his oath of office and received his appointment, it was not considered necessary to further swear him in at the expiration of any appointment, and renewals were then given on the basis of the original oath.

Q. If a man had in his possession, or if Mr. Williams had in his possession, a card issued in January, 1947, expiring in June of 1947—

The COURT: You are leading now, Mr. Botts.

Mr. BOTTS —what would that indicate with reference to that procedure?

Mr. CUSHMAN: I object to the question, because the question, I submit, means nothing.

The COURT: Over-ruled. Go ahead.

By Mr. BOTTS:

Q. Read the question, Miss Reporter.

(Question read by reporter.)

The COURT: I am inclined to agree with counsel.

Mr. BOTTS: I withdraw the question.

By Mr. BOTTS:

Q. Mr. Price, what is the card that you have now? Is that the original card, or what is it?

A. Our system was in need of repair. It is designed to meet our needs and none other. And in order to

266 meet our requirements, a new system was instituted in 1947, requiring that applications be filled out in writing and new records were designed and information taken from the old record cards as to the date of the original oath, and the current card then issued at the time of the writing of this new record card.

Q. What disposition was normally made of the old record card when that record card which you hold in your hand was written up?

A. It was destroyed.

Q. Previous record cards would be destroyed as the current one came in?

A. Only on the occasion of putting in the new system.

Q. All right. Do you have a similar card for Mr. Perry?

Mr. CUSHMAN: May I ask a question at this point, your Honor?

The COURT: All right.

Mr. CUSHMAN: When did you first become connected with the office of the Chief of Police.

The WITNESS: January, 1947.

Mr. CUSHMAN: Thank you.

By Mr. BOTTS:

Q. Will you give what similar information on the card you have with reference to Joseph Perry?

267 A. Special Officer card in the name of Joseph Perry, there are two addresses in the blank for address—8099 N. W. 17th Avenue and 1451 N. W. 8th Avenue; telephone, 9-5046; color-sex, white male; height, 5' 11"; weight, 185; hair, brown; employed by, American Detective Bureau; address, 2277 N. W. 60th Street, telephone, 89-2483; employed as (blank); Card No., AG-29, BCI No. 22822; Valid for 3/15/48 to 8/15/48—8/18/48 to 2/28/49; Oath, 7/2/46.

Mr. BOTTS: I have presented these to counsel for Mr. Perry and Mr. Williams, and if I am correct, it is stipulated that the Perry card refers to the defendant Perry, Joseph Perry, and that the Williams card refers to the defendant Jay G. Williams.

By Mr. BOTTS:

Q. Mr. Price, is a complete record kept of all of these special police cards and a complete permanent record?

A. Only the roster in which the entry of the application at the time of its approval is kept.

Q. Is this record designed as a public record or as information to the police department?

A. As information to the police department.

Q. Do you have any record at all for Mr. John S. Bombaci?

A. No, I do not. I beg your pardon, I have a record for him. I misunderstood the question.

268 Q. What record do you have of Mr. John S. Bombaci?

A. Well—

Mr. CUSHMAN: I respectfully suggest that the only proper question is whether he has any record showing the appointment of Mr. Bombaci as a special officer, and I object to any other record at all.

The COURT: I over-rule the objection. What have you?

The WITNESS: I have an identification bureau record card which is kept on applicants, indicating that John S. Bombaci was finger printed on February 22, 1947, as a private detective. It bears his description, his finger print description, and his application register number.

By Mr. BOTTS:

Q. That is an applicant for what?

A. As a private detective.

Q. Is there any memorandum there from which, in the course of the business as conducted in the Police Department, you could tell whether or not one of these private police cards was actually or probably issued to Mr. Bombaci?

A. A search of those records which reference has already been made to does not indicate that Mr. Bombaci received a card.

Q. You have no record of it?

A. No, sir.

269 Mr. BOTT: That is all.

Cross Examination.

By Mr. FLOYD:

Q. Mr. Price, on the card relating to Mr. Perry, it states the oath was taken July 2, 1946. Do you have any record to show whether, if an appointment was made on July 2, 1946, that was for a one year appointment or a six months appointment?

A. No, sir.

Q. Or a one month appointment?

A. Possibly.

Q. Do you have any record to show that a special officer's card was issued to Joseph V. Perry, which was in force and effect March 26 through March 29, 1947?

A. No, sir.

Q. There is no way that you have of showing when any records you have—these included—that the appointment, if any, on July 2, 1946, made to Mr. Perry, expired and was not then again renewed?

A. It was.

Q. Until March 15, 1948, which is the next card?

A. That is right.

Mr. FLOYD: That is all.

Further Cross Examination.

By Mr. PRUITT:

270 Q. Would not your answers be the same with reference to your records pertaining to Mr. Williams?

A. Yes, sir.

Q. You have no record showing that a police card was issued to Jay Williams, this defendant sitting here, prior to March of 1947, have you?

A. Shall I answer that at length?

Q. Yes.

A. The record indicates he did receive a card, by the oath given August 30, 1944. And this new record here shows that he received a card, the term for which it was valid from October 8, 1947 to January 15, 1948.

Q. For the purpose of clarification, isn't it true that the record you hold in your hand shows the date the oath was supposed to have been given?

A. Yes, sir.

Q. And there is nothing in your hand in that regard to indicate that a special police card was given at the time the oath was administered?

A. No, sir.

Mr. PRUITT: That is all.

Mr. FLOYD: I have a few questions.

The COURT: You have cross examined once.

Mr. FLOYD: I have just one or two questions, your Honor.

The COURT: All right.

271 Further Cross Examination.

By Mr. FLOYD:

Q. You are familiar with these police officer cards and the issuance of them?

A. Yes, sir.

Q. What is the purpose of a re-issuance of a special police officer card?

A. The special officer cards usually are issued in the first place to facilitate the work of private patrolmen and private detectives, who, although operating or participating in private business, are considered a service to the City of Miami. The charter of the City of Miami in interpreted to indicate they should run for a limited time only. In order to comply with the terms of the city charter, they are made to run for a limited time only, for the convenience of the police department, and also to comply with the terms of the city charter. And they therefore are re-issued from time to time, if they expire.

Q. If a man or woman does not have a valid card in his or her possession, they are not entitled to the privileges allowed special police officers, are they?

A. It seems like a legal opinion—I wouldn't know how to answer.

Q. If the period of time covered by the appointment has expired, it is not renewed automatically, is it?

272 A. No, sir.

Q. He just becomes another individual then?

A. Yes, sir.

Q. Do you have a copy of the oath taken by the special officers?

A. Yes, sir.

Q. With you?

A. Yes, sir.

Q. What period of time is this permanent record you have? What period of time does that cover in regard to Mr. Perry?

A. The book here, in which all special officers, policemen, etc., are sworn in, runs from July 1, 1946.

Q. July 1, 1946. If Mr. Perry was a special police officer continuously from July 2, 1946, up through and including March 29, 1947, wouldn't that book show it?

A. No, sir. It shows the date the oath was administered, but it doesn't have any place for the reference to the time for which the appointment or authority will run.

Q. It may very well be, Mr. Price, that his first appointment could have expired and he was not re-issued a card after the first appointment, and that book you have would not show it, would it?

A. No, sir.

Mr. FLOYD: That is all.

273 **Further Cross Examination.**

By Mr. LETTS:

Q. You refer to the application you had for Mr. Bombaci for the purpose of a private detective's permit. Based on the record that you have there, the application as your records show, would not necessarily mean that any special officer's permit would be issued, isn't that true?

A. That is correct.

Mr. LETTS: Thank you.

The COURT: Bombaci's card doesn't even show application to be an assistant policeman, does it?

The WITNESS: No, sir.

The COURT: That is an application with reference to being a private detective?

The WITNESS: Yes, sir.

The COURT: Further questions?

Mr. BOTTS: No, sir.

(Witness excused.)

Mr. BOTTS: I will recall Mr. Matthews.

Mr. FLOYD: If the Court please, if Mr. Botts is going to inquire of Mr. Matthews with regard to the card just introduced in evidence, we would like the privilege of first questioning Mr. Matthews about that card before it is exhibited to him.

Mr. BOTTS: I am not going to ask him about that.

274 The COURT: Take the stand.

TOBIAS MATTHEWS was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. BOTTS:

Q. When you examined these private police cards exhibited by Mr. Williams and Mr. Perry, did you make a memorandum of the date of issue and date of expiration, as shown by those cards?

A. I remember specifically asking them the question as to the period of the validity of the cards, because I was particularly interested in their status in March.

Q. Have you examined your report in that connection?

A. I reviewed my reports, yes, sir.

Q. From that, can you state now what the time of issue and the date of expiration of each of those cards was?

A. It was from January of 1947 to the last of June of 1947.

Mr. BOTTS: Thank you.

Cross Examination.

By Mr. FLOYD:

Q. You say that Williams and Perry told you what the date of the issuance and expiration of their cards was?

A. I looked at the card itself.

Q. What color was the card?

275 A. It was a yellow card. As well as I can recall, it was a yellow card.

Q. You were questioning Mr. Perry and Mr. Williams in your status as an F. B. I. agent, were you not?

A. Yes, sir.

Q. You were investigating a case in which you thought they might become involved?

A. That is right.

Q. Did they come to your office voluntarily or did you have to pick them up and put them under arrest?

A. Both of them, Mr. Williams and Mr. Perry, came to the office voluntarily.

Q. Just a phone call?

A. That is right.

Q. Where on the card, on the front or reverse side, did the name of Mr. Donner that you saw was on there appear?

A. As well as I recall, it was on the front portion of the card on the right-hand side.

Q. On the top or bottom of the card?

A. I would say the lower right hand corner.

Q. Where in relation to Mr. Donner's signature did Chief Mitchell's name appear?

A. One was above the other. Whose came first, I don't know. There was one and then the other.

276 Q. I take it to mean that Mr. Donner's name was here and Mr. Mitchell's directly below, or vice versa?

A. As well as I can recall.

Q. In the same corner?

A. That is right.

Q. This was when you interviewed these two men?

A. Mr. Williams came to the office in May of 1947, and Mr. Perry came in June of 1947.

Q. Was it as long as a month apart?

A. Approximately one month apart, yes, sir.

Q. What writing, if any, or printing appeared above the two signatures?

A. As well as I recall, there is a paragraph, a portion of a small paragraph in fine print setting forth the purpose of the card or identifying the individual on that.

Q. Do you remember what that said?

A. Exactly what it said, I do not know.

Q. What else was on the front side of the card?

A. As well as I can recall, there was a seal on the front of the card.

Q. Anything else?

A. There was the date, the City of Miami. I believe the photograph was on the back of that particular card.

Q. Was there anything else on the front side?

277 A. Not as I can recall.

Q. What was on the reverse side of the card?

A. There was additional writing on the reverse side of the card.

Q. What did that say?

A. I don't recall the contents. It had something to do with the validity of the card, whatever statute it was issued under.

Q. What else?

A. As well as I can recall, the photograph was on the back.

Q. Is that all you remember that was on the cards?

A. Other than the validity date of the card. I asked them if they were special police officers, and they said "Yes." I said, "Were you a special police officer during the month of March?" And they said, "Yes."

Q. Do you remember anything else on the card?

A. No, I can't recall anything else.

Q. From your testimony, you have a very vivid recollection of the date, particularly, but you, from your testimoney here today, have stated nothing about the signature of the man to whom the card was supposed to have been issued, or the man's name himself. Refreshing your recollection, do you recall the signature of the man to whom the card was issued?

278 A. The signature of the individual to whom the card was issued appeared on the card. Exactly where his name appeared, I do not recall.

Q. But you are sure now that his name appeared on the card?

A. To the best of my recollection. I remember particularly the name of Chief Mitchell, because shortly after seeing the cards, I talked to Chief Mitchell himself.

Q. Do you remember the number of the special officer's card issued to Mr. Perry?

A. As well as I can recall, the card number of the men was in three digits.

Q. It has been testified that there are two hundred special police officers—

A. It was not a real low number.

Q. You knew you were going to continue this official investigation, didn't you?

A. I did.

Q. Did you request from Mr. Williams or Mr. Perry, their card for photostatic purposes?

A. I did not, because I subsequently located some records in the possession of Mr. Price.

Q. Those records have not been produced today, have they?

A. Not the records on the validity of them. He
279 says he doesn't have them.

Mr. Botts: Come down.

(Witness excused.)

The Court: We will take a ten-minute recess.

(Recess.)

After Recess:

Mr. Botts: I will recall Mr. Price.

Charles Price was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. Botts:

Q. Do you have with you a roster of these special police cards?

A. Yes, sir.

Q. Will you look under date of January 14, 1947, No. TO-43 and see to whom that card was issued?

A. Jay G. Williams, Continental Detective Bureau.

Q. TO-44?

A. Joseph Perry.

Mr. Botts: Thank you.

Mr. Cushman: You don't have any for Giroux or Bombaci?

The Witness: I have one for Giroux but not for Bombaci.

Mr. Cushman: That is all.

(Witness excused.)

280 Mr. Botts: The Government rests.

The Court: Gentlemen, you may retire to your room.

(Jury retires.)

The Court: All right, you may proceed with your motions.

*Motion for Directed Verdict (Yuhas)*

Mr. Roberts: Comes now the defendant, Andrew Yuhas, at the conclusion of the Government's case, and respectfully moves the Court to direct the jury to enter a verdict of not guilty as to him on the following grounds: (1) That the evidence adduced in this cause is insufficient to prove his participation in any conspiracy; (2) That the evidence adduced at the trial of this cause is insufficient to prove the commission of any conspiracy; (3) That the evidence adduced at the trial of this cause is insufficient to prove the existence of any conspiracy; (4) That the evidence produced at the trial of this cause is insufficient to prove the commission of any of the alleged acts complained of; (5) That the evidence produced at the trial of this cause is insufficient to show his participation in any of the alleged acts complained of; (6) That the evidence produced in the trial of this cause is insufficient to show any aiding or abetting on his part in any of the acts complained of.

I might state that this motion is directed singly and severally in each one of the counts in the indictment. That is as far as the defendant Yuhas is concerned.

281 Comes now the alleged defendant—I am embarrassed and at a loss to identify the corporation.

The Court: Go ahead with your motion. I understand your position.

Mr. Roberts: —and at the conclusion of the Government's case, respectfully moves the Court to direct a verdict of not guilty, and for grounds thereof, as to each one of the counts contained in the indictment singly and severally, and not jointly, says—in order to avoid repetition, I want those same six grounds heretofore given by the defendant Yuhas. Next number: (7) That there has been no evidence introduced in this cause on the part of the Government to show the existence of the alleged defendant corporation: next (8) That it affirmatively appears from the Government's testimony that there is no corporation existing under the name of Lindsley Lumber Company; next (9) That there has been no evidence whatsoever introduced at this trial to show that any of the acts complained of were done by any of the clerks, agents, servants or employees of

the alleged defendant corporation; next (10) That there has been no evidence whatsoever introduced at the trial of this cause that any of the acts complained of were done on behalf of the alleged corporation; next (11) That there has been no evidence whatsoever introduced at the trial of this cause that any of the acts complained of were
282 authorized or ratified by the alleged corporation; next (12) That there has been no evidence whatsoever produced by the Government at the trial of this cause that any of the acts complained of were done with either the knowledge or consent of the alleged corporation; next (13) That there has been no evidence whatsoever produced at the trial of this cause that the acts complained of were done by the authority of the alleged defendant corporation, either expressly conferred or fairly implied; next (14) That there has been no sufficient credible evidence before this jury to justify it in returning a verdict of guilty.

The COURT: All right. Who is next?

*Motion for Directed Verdict (Ford)*

Mr. CUSHMAN: May it please the Court, comes now the defendant, Charles R. Ford, at the conclusion of the Government's evidence, and moves the Court to instruct the jury to return a verdict of not guilty, on the grounds, as follows: (1) There is no evidence upon which the jury could lawfully find him guilty of any charge laid in either or all of the counts contained in the indictment; (2) That the Government has failed to prove the existence of any conspiracy in this cause as charged in the indictment; (3) That there is no evidence in this case upon which the jury can lawfully find that the defendant, Charles R. Ford, was a party to any conspiracy as charged in the indictment; next (4) That there is no evidence upon which the
283 jury can lawfully find that the defendant, Charles Ford, acting under color of any law, attempted to or did deprive any of the witnesses of their civil rights, so as to make him guilty under any of the even-numbered counts in this case.

I therefore move the Court to direct a verdict of not guilty in favor of the defendant Charles Ford.

*Motion for Directed Verdict (Perry)*

Mr. FLOYD: Comes now the defendant, Joseph V. Perry, and moves this Honorable Court to instruct the jury to

return a verdict of not guilty as to Joseph V. Perry, and for grounds therefore as follows: For the purposes of clarity, would you take the same grounds as recited for defendant Yuhas by Attorney Roberts, with the exception of the last ground, about the aiding and abetting?

The COURT: I might say to you that that aiding and abetting is included within the indictment. Under the Federal statute, there is no such thing as aiding and abetting.

Mr. FLOYD: Then, sir, we would like that included on all six grounds.

*Motion for Directed Verdict (Williams)*

Mr. PRUITT: Comes now Jay G. Williams, one of the defendants, and at the conclusion of the Government's case, moves the Court for a directed verdict and for the purpose of brevity, accepts and adopts the several grounds heretofore made on behalf of the defendant Yuhas, the dedefendant Perry.

*Motion for Directed Verdict (Bombaci)*

Mr. LETTS: Comes now the defendant John S.
284 Bombaci, at the conclusion of the Government's case and moves this Honorable Court to direct a verdict of not guilty for the defendant John Bombaci, for the following reasons: The defendant John S. Bombaci adopts and accepts the several grounds as stated for the defendant Yuhas, with the additional ground that no evidence has been produced or shown by the Government to prove that the defendant John S. Bombaci has in any way or at any time operated under color of law or as a special police officer as charged in all eight counts of the indictment.

The COURT: Is that all of the defendants?

Mr. ROBERTS: Yes, sir. Would your Honor like to hear some law?

*Colloquy Re Motion of Lindsley Lumber Co.*

The COURT: Yes, sir, but in a slightly different order. I do not care, Mr. Botts, to hear from you on anything except the motion of the Lindsley Lumber Company.

Mr. BOTTS: If the Court please, I want to say in that connection, that the Linsley Lumber Company was the name furnished me by the F.B.I. and I assumed it was correct, and they assumed that this name under which they were

doing business to be correct. If your Honor does not agree with the suggestions that I have, it will of course be necessary to present that matter to a grand jury further. My thought is this—

The COURT: As I understand, the indictment
285 charges Lindsley Lumber Company, Incorporated, a corporation.

Mr. BOTTS: Words to that effect.

The COURT: There is no such corporation as Lindsley Lumber Company?

Mr. BOTTS: That is right.

The COURT: There is a concern doing business in this vicinity which does business as Lindsley Lumber Company?

Mr. BOTTS: Correct.

The COURT: It actually is a corporation incorporated as Dania Supply Company?

Mr. BOTTS: That is correct.

The COURT: And then there was evidence about the Dania Supply Company having registered itself under the statute as Dania Supply Company.

Mr. ROBERTS: I might acquaint your Honor with the Florida statute that says any person or persons who wish to engage in business under a fictitious name should run an ad in the newspaper once a week for four weeks.

The COURT: We have that same statute in effect.

Mr. ROBERTS: There is quite a dispute among the lawyers as to whether or not a corporation can do that, has to do it and should do it.

The COURT: But otherwise you do it.

Mr. ROBERTS: In the abundance of precaution it was filed down here and this is merely proof of the
286 publication of the existence of that corporation, the publication of which was filed prior to March 28th, at the time the alleged acts occurred, and certainly prior to the time of the rendering of the indictment, that it was Dania Supply Company.

The COURT: At this point, all I have got on that is the testimony of somebody, that the Dania Corporation had registered as Lindsley Lumber Company under the Florida statute.

Mr. ROBERTS: And that there is no corporation known as Lindsley Lumber Company.

The COURT: Those are the facts, Mr. Botts?

Mr. BOTTS: Yes, sir.

The COURT: Upon what basis can this prosecution be maintained against Lindsley Lumber Company, a corporation? Of course, an indictment can be amended in any particular. Suppose I struck out as surplusage "a corporation." What would that leave us with? And could I strike it out as surplusage?

Mr. BOTTS: If the Court please, here is the position I am going to suggest. I wouldn't want to say I am going to urge it because it is a question I have never studied very much. But if this was a civil suit against the Lindsley Lumber Company, I think there would be no question about it.

287 The COURT: What would be the situation if it were a civil suit?

Mr. BOTTS: It would have to go out. If you sued the Lindsley Lumber Company and there was no such corporation you could not maintain the suit.

The COURT: Aren't you in a worse fix? Suppose the jury should convict the Lindsley Lumber Company and suppose I should impose a fine. From whom would the Government collect that? Suppose I undertook to put somebody in jail. Of course I couldn't do that, but I could impose a fine. From whom would you collect that fine?

Mr. BOTTS: I would like to submit this hypothesis, and then I am through. If you have to submit this to a grand jury—

The COURT: That doesn't concern me.

Mr. BOTTS: —this is the law with reference to indictments. The name by which you indict a person, or by which a person is indicted, makes very little difference.

The COURT: They have got a thing in New York they call the "John Doe indictment."

Mr. BOTTS: If you don't know the true name of the individual, you indict him and describe him as a fictitious person.

The COURT: And then suppose you catch somebody.

Mr. BOTTS: We try him under whatever name he
288 had and I have done it and convicted him.

The COURT: Suppose you suspect that I have committed a crime, and you indict my brother, John Barksdale. Could you then try me? Could you come in and prove it, and say, "I indicted John but I meant this one."?

Mr. BOTTS: I think so, under the law. Here is what I am reading from—42 CORPUS JURIS, on Indictments: (Reading) "A description of accused by the name by

which he is commonly and generally known is sufficient, although it is not his true name, or is an adopted or assumed name, or although such common and general name is a nickname." (Ends reading)

Here we have this situation. I have been buying small quantities of goods for years from the Lindsley Lumber Company. Every individual in Miami knows them as the Lindsley Lumber Company, and I doubt whether there are ten persons who know that is not their true name. The person we have indicted here is the person who has been doing business as Lindsley Lumber Company, and we now discover that the actual person is Dania Supply Company. If this law applies to individuals, to persons, I see no reason why it cannot apply to the Lindsley Lumber Company.

That is the hypothesis, and as I say, if we had indicted some person here as "John Doe", a fictitious person, or if we had indicted them as—suppose that Mr. Yuhas'
289 name, that that is an assumed name and not his true name, but he is known by that name. We could try him unquestionably, and the judgment would be a valid judgment, though his name might be George Washington. That is unquestionably the law.

I am submitting to Your Honor this proposition. I looked to try and find the application of that principle of law applied to a corporation. As your Honor can well understand, I haven't had much time since this question arose to do that. And I will say frankly, I was not able to find a case where that law was applied to a corporation, because that is quite a recent thing. But I see no reason, if James Smith, if that is his true name and he is indicted as George Washington and he can be tried, under that indictment, I see no reason why the corporation, which is actually conducting a large part at least, of its entire business, under the name of Lindsley Lumber Company and is so commonly known, we would have no difficulty in identifying the corporate individual intended to be penalized here. That is the proposition.

I am going to suggest, if the Court please, I think there is at least, in view of the long established principle with reference to the fact, that a name means practically nothing in an indictment, if you get the right individual. I think there is a sound basis for arguing that in this case, which means the same.

The Court: Gentlemen, it is close to four o'clock.
290 I am of a mind to let the jury go, while we are considering these motions. Generally, I am going to over-rule the motions.

Bring the jury in.

(Jury returns to court room.)

The Court: Gentlemen of the jury, as the situation has developed, I have decided to excuse you now until tomorrow morning at nine-thirty.

(Jury excused.)

Mr. Botts: I was going to suggest this. I don't—I may finagle my friends on the other side, but I always try to be frank with the Court. It seems to me that it is a sound theory. Since we are not going to get to the taking of testimony until tomorrow, I was going to suggest that the Court give me an opportunity between now and tomorrow morning to see if I can find anything further on that.

The Court: It is a novel question to me. I am considerably impressed and have been in my thinking about that business or doctrine that it is permissible under the law to indict a man under his nickname and alias, and prove when you get him in there what his right name is. But I don't know whether it is applicable to a corporation, and what I am concerned about is if this defendant was convicted, against whom would the verdict be sustained.

Mr. Botts: I think the judgment would be against
291 Dania Supply Company, doing business as Lindsley Lumber Company.

The Court: Would I have any right to adjudge it that way?

Mr. Botts: At the moment, I see no reason why it isn't sound.

The Court: I don't want to delude you, Mr. Roberts, that I have made my mind up on it, but I have asked Mr. Botts an embarrassing question.

Mr. Roberts: The only thing I can say about what Mr. Botts has said about indicting a person under the name of Jim Jones when his name is Jim Smith, here you have a corporation which is not taking an assumed name.

The Court: But in a way, isn't it?

Mr. Roberts: The Dania Company may have an assumed name, but that is quite a different thing.

The Court: What is the difference in principle of indicting a man under his nickname and convicting him under his proper name, and indicting these people under their trade name when their corporate name is something else?

Mr. Roberts: Because the corporation only has the name which is given to it by the state at the time of its charter.

The Court: But your people have deliberately taken

another name, and pay off under it, and advertise
292 under it, etc.

Mr. Roberts: The public records show, and I think as Mr. Botts knows, at the time these four gentlemen were before the grand jury, their cases were already pending against the Dania Supply Company and not the Lindsley Lumber Company.

Mr. Botts: If anyone had ever called my attention to that, you wouldn't have the indictment under the Lindsley Lumber Company.

Mr. Roberts: Carrying your Honor's thought out further, if there is a verdict of guilty, all the jury can find guilty is Lindsley Lumber Company, a corporation.

The Court: I cannot strike out the word "corporation" as surplusage?

Mr. Roberts: No, sir, because you are amending an indictment.

The Court: Would I be amending an indictment, or would I be striking out surplusage—something that isn't necessary?

Mr. Roberts: Let me put it this way. If you struck out "a corporation" that in effect would admit there is no such corporation as Lindsley Lumber Company. Then if you entered the judgment, Dania Supply Company wouldn't have to pay, because that is a corporation.

The Court: I will have to admit there is no such
293 corporation as Lindsley Lumber Company. Certainly it is improperly described in the indictment, because there is no such thing as Lindsley Lumber Company, Incorporated.

The Court: What are those books you have there?

Mr. Roberts: This is relative to the liability of the corporation.

The Court: I am not concerned with that. What are you going to do about Mr. Yuhas' presence while all this was going on?

Mr. Roberts: Mr. Yuhas is not an officer of the corporation.

The Court: I am not talking about what the jury may find, but we have testimony that one of the Lindsleys turned the situation over to Mr. Yuhas to represent the company and to cooperate in every way with this detective agency. Why isn't that sufficient?

Mr. Roberts: For this reason. The only testimony I recall was Mr. Giroux told Mr. Williams—

The COURT: He said Mr. Roc Lindsley got the detective agency in and assigned Mr. Yuhas to cooperate and afford them every facility.

Mr. ROBERTS: This is a criminal matter and we can't stretch the word "cooperate." There is no way of knowing that the cooperation extended that far. The cooperating meant to an investigation of the facts which were
294 surrounding the mysterious disappearance of some lumber. Mr. Roc Lindsley, who himself is not shown to be in authority of the Lindsley Lumber Company—there are many Lindsley brothers and cousins, etc., out there—there is no showing that assuming he did have that authority, that he gave any authority, either expressed or implied, other than inquiring or investigating or asking where the lumber went to. The arresting of people takes expressed authority before the corporation itself can be held liable on the part of its agents, and that is the law I have here. Merely because the corporation may say, "Go ahead and investigate the matter," that in itself is not expressed authority or implied authority that they can—

The COURT: I have stood in exactly the same position in which you now stand on numerous occasions and made exactly the same argument you are making, and I never got by with it. I just don't think along with you. I prefer not to further discuss the evidence—that is sufficient. But I am very much concerned with your other question.

I will take under advisement the motion of Lindsley Lumber Company for a directed verdict of acquittal. As to all other motions, the action of the Court is to overrule the motions. It may be noted that exceptions are taken by all defendants to the ruling of the Court. If you two gentlemen concerned with the Lindsley matter will
295 be kind enough to let me have anything you can first thing in the morning, I will be obliged to you. I think I ought to rule on it, because if you are going out, we ought not to go into further testimony about it.

Adjourn court until nine-thirty tomorrow morning.

(Whereupon, at 4:30 o'clock, p. m., court was adjourned until Wednesday morning, January 19th, at 9:30 o'clock, a. m.)

296 In the District Court of the United States
For the Southern District of Florida

MIAMI DIVISION

7279—M—Cr. (Jury)

UNITED STATES OF AMERICA
v.
JAY G. WILLIAMS, *et al.*

Miami, Florida
January 19-20, 1949

*Transcript of Testimony*

Before: HON. ALFRED D. BARKSDALE,
*U. S. District Judge.*

APPEARANCES:

Fred A. Botts, Assistant U. S. Attorney, for the Government.

Messrs. Ernest Roberts and Edwin Strickland, (Roberts, Holland and Strickland) for the Defendants; Andrew J. Yuhas and Lindsley Lumber Company.

William Pruitt, for the Defendant Jay G. Williams.

Ned M. Letts, for the Defendant John S. Bombaci.

L. J. Cushman, for the Defendant Charles R. Ford.

Messrs. Robert L. Floyd and Edward F. Boardman, for the Defendant Joseph V. Perry.

297 (Court was reopened for the trial of this case on Wednesday, January 19th, at 9:30 o'clock a. m.)

PROCEEDINGS

The COURT: Have you anything further on the motion I took under advisement yesterday?

Mr. BOTTS: Yes, sir. I have the complete and unquestioned answer to the problem as answered by the Circuit Court of Appeals, not of this circuit. If the Court please, it is the law that a corporation may acquire a name by prescription in like manner as an individual. They may do business in that manner, and this corporation has done so. In the first place, this defendant, Lindsley Lumber Company, has not in any proper way taken advantage of the so-called misnomer; in order to do so, they must under the law, have filed a plea in abatement wherein, to make it a good plea, they must allege the misnomer and couple it with the allegation they were not commonly known under that name.

That they could not do under the evidence, which properly accounts for the fact that they did raise this in the only proper way. The rule is, and I shall cite two recent cases—one by the Circuit Court of Appeals, in a matter of a misnomer, the proper procedure is to amend the indictment and that may be done. And I have the authority for that. The rule is that an indictment may not be amended in a matter of substance, but it may be amended in a matter of form; and as was said
298 with reference to a name as far back as Blackstone, who coined the phrase, "You do not indict a name—you indict an individual." And it does not matter what name he is indicted under, if that is the name by which he is commonly known.

*Motion to amend indictment*

At this time I wish to dictate into the record a motion, and file it: (Reading)

"Comes now the plaintiff, United States of America, by its undersigned attorney, and moves the Court to enter an order amending said indictment and each and every count thereof severally in the following particulars:

By striking out of said indictment and each and every count thereof severally, wherever the same may appear therein, the words "Lindsley Lumber Co., a corporation," or the words "Lindsley Lumber Co.," and inserting in place of said words so stricken out in each place in said indictment and each count thereof severally where the same may be stricken out, the words "Dania Supply Company, a corporation, doing business as Lindsley Lumber Co", on the ground and for the reason that the undisputed evidence shows that the name "Lindsley Lumber Co." was a trade name used by Dania Supply Company a corporation, in conducting its business; that said Dania Supply Company, a corporation, is in fact the defendant sought and intended to be described in said indictment, in each place where the designation "Lindsley Lumber Co." was used and that the use of the words "Lindsley
299 Lumber Co." was a misnomer in a matter of form and not of substance." (Ends reading)

I now file the original of that notice, and hand to counsel a copy of the motion.

If the Court please, I have the authority here to the effect that a corporation may acquire a name by prescription as may an individual, and that it is not required that they do business under their corporate name. However,

the important question is this question of how we shall meet the situation. It would seem that there could be no serious doubt that there was a misnomer here. I have the case of *United States* v. *Fawcett et al.*, 115 Fed. 2nd, page 764. The decision is not too long, but so much of it is pertinent that I am going to read quite a bit of it, because it is all pertinent. (Reading)

"The defendants, Robert Fawcett and Harry Nelson, were indicted on two counts. The first count of the indictment charged that on or about the 10th day of August, 1939 at Bellmawr in the District of New Jersay, the defendants did knowingly, unlawfully and feloniously sell to one Ellis Anderson, with the intention that the same should be uttered, published and passed as true and gennine, forty counterfeit obligations of the United States. The second count charges that, at the same time and place the defendants did possess the same forty counterfeit obligations. The indictment as returned by the Grand Jury of the District of New Jersey on October 10, 1939, charged

"Robert Fawcett and Harry Nelson" as above in-
300 dicated. The indictment was amended by order of court on December 15, 1939, with respect to the name "Harry Nelson", so as to make it read "Harry Nelson otherwise known as Leo Wilson". On the same day the defendants pleaded "Not guilty", and on the 4th of March, 1940 were tried together. On the following day a verdict of guilty was rendered on both counts as to both defendants. The defendants moved in arrest of judgment and for a new trial, alleging that certain prejudicial errors led to their conviction. Upon denial of these motions, appeal was taken to this court.

The arguments most seriously pressed upon us for consideration is that the amendment allowed by the District Court making the addition, "otherwise known as Leo Wilson" is fatally defective. At common law it was beyond question that in the English courts the body of an indictment could not be amended. The reasoning behind this rule was that the finding of a grand jury was upon oath and, depending upon this fact amongst others for its validity, could not be amended by the court or the presiding officer in any manner of substance without the concurrence of the grand jury which presented it; Rex v. Wilkes, 4 Burrow 2527, Hawkins Pleas to the Crown Bok 2., C. 25, Sec. 97. This doctrine has been followed in the Federal courts and whenever an amendment of substance has been made in the body of an indictment, the courts have been quick to hold it

violative of the Fifth Amendment of the Constitution, providing that "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a present-
301 ment or indictment of a Grand Jury"; *Ex parte* Bain, 121 U. S. 1, 7 S. Ct. 781, 30 L. Ed. 849; Dodge v. United States, 2 Cir., 258 F. 300; Stewart v. United States, 9 Cir., 12 F. 2d 524. This is true even if the defendant agrees that the facts stipulated should have the same effect as if set forth in the indictment, United States v. Norris, 281 U. S. 619, 50 S. Ct. 424, 74 L. Ed. 1076. However, an examination of the cases will show that the prohibition has been directed against amendments to the body of an indictment, and no case has been found where our courts have ruled directly on the question of whether the change in name of the defendant, by the amendment of the indictment to that effect, before plea is entered, and where no question of the identity of the defendant is involved, would be such a substantive change as would be violative of the Fifth Amendment.

In various states, such as New York, Pennsylvania, New Jersey, Virginia, etc, statutes have permitted amendments to indictments which are merely formal, and which in no wise affect or prejudice the rights of the defendant. Statutes providing for the amendment of the name of a defendant are common among states permitting such amendments. These statutes were resorted to in the various states to avoid the delay and inconvenience of the roundabout method of the common law system of criminal procedure. For when a person who was indicted put in a plea of abatement on the ground of misnomer and such a plea was found
302 to be true, the result was that he either had to be discharged or proceedings against him for the alleged crime by the name designated in his plea had to be begun *de novo;* 1 American Criminal Law, Sec. 537; Hale's P. C. 176, 238.

Congress in all probability motivated by the same desire as the States to relieve against formal technicalities both on the civil and criminal side of the law enacted two remedial statutes.

In 18 U. S. C. A. 556, it was provided that "no indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insufficient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant." Likewise in Sec. 269 of the Judicial Code,

28 U. S. C. A. 391, there is provided "on the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties." These statutes we think evidence the intention of Congress to eliminate the effect of all purely technical and formal defects which in no wise prejudice a defendant, or affect his substantial rights, on the theory that, in the progress
303 of the law, narrow formalism should be eliminated and only the attainment of substantial justice sought. In the instant case the defendant raised no objection to the addition "otherwise known as Leo Wilson" at the time the government requested the change of the name in the indictment; no objection was made by the defendant to the change at the time of the entry of his plea of not guilty, and in fact throughout the whole case no objection was raised by the defendant to this addition, nor was any question ever raised as to the identity of the defendant. The question was only raised and for the first time at the close of all the evidence by a motion in arrest of judgment.

The test as to whether the defendant is prejudiced by an amendment to an indictment has been said to be whether a defense under an indictment as it originally stood would be equally available after the amendment is made, and whether any evidence the defendant might have would be equally applicable to the indictment in the one form as in the other: State v. Moyer, 76 Or. 396, 149 P. 84. As the court says in Lasure v. State, 19 Ohio St. 43, at page 50, "Blackstone (vol. IV, marginal paging 302) thus defines it: 'An indictment is a written accusation of one or more persons of a crime or misdemeanor, preferred to, and presented upon oath by, a grand jury'. An indictment, then, is an accusation of a person of crime. It is an accusation against a person, and not against a name. A name is not of
304 the substance of an indictment. And a person may be well indicted, without the mention of any name, and designating him as a person whose name is to the grand jurors unknown." That goes clear back to Blackstone.

"Since the defendant was in no wise misled or prejudiced in any degree whatever by the change and no substantive right affected thereby, it is clear that the name by which he was indicted could have nothing to do with the question of his guilt, the character of the offense, the nature or

degree of criminality or punishment attached to it, or with the evidence which should be sufficient to warrant conviction. Therefore the change herein made was only one of form and comes within the meaning of the statutes herein referred to. It was properly allowed.

Furthermore, the objection by the defendant to the change of the name in the indictment as raised in his motion in arrest of judgment comes too late. At common law when an indictment assigned to a defendant merely a wrong Christian name or surname, he could only take advantage of the error by a plea in abatement, the burden of proof which was on the defendant. This was equally true of a wrong addition to a name. And so when a prisoner desired to raise any question as to the name under which he was charged in an indictment, he was compelled when called upon to plead, distinctly to raise that question by a plea in abatement, stating his real name. It was a rule upon all pleas in abatement that the one who took
305 advantage of such flaws must at the same time show how they could be corrected. The question thus raised was tried by a jury and if the finding was in favor of the defendant, the indictment was abated; United States v. Howard, Fed. Cas. No. 15, 402, 1 Sawyer 507; Commonwealth v. Zinkeris, 79 Pa. Super 85; 1 Bishop's New Criminal Procedure Sec. 677-2.

While on motions in arrest of judgment, the judgment will be arrested where no indictable offense is set forth; Commonwealth v. Hinds, 101 Mass. 209; where the statute creating the offense has been intermediately repealed, United States v. Goodwin, C. C., 20 F. 237; where the case has been tried by more or less than twelve jurors, State v. Meyers, 68 Mo. 266; it is clear that if a misnomer of the defendant is not met by a plea in abatement, it is too late for objection after trial as failure to plead the misnomer in abatement cures the defect where the plea is not guilty and for the purpose of the case the prisoner has the name given in the indictment; Wharton's Criminal Pleading and Practice, 9th Ed., 761; 3 Wharton's Criminal Law, Sec. 70; 1 Bishop's Criminal Practice 2d 711; Commonwealth v. Butler, 1 Allen, Mass., 4; United States v. DeQuilfeldt, C. C., 5 F. 276; Sherman v. United States, 4 Cir., 80 F. 2d 629; Kilrow v. Commonwealth, 89 Pa. 480; United States v. Gale, 109 U. S. 65, 3 S. Ct. 1, 27, L. Ed. 857. Accordingly, if the defendant here wished to raise the question of
306 his being indicted under a wrong name, he should

have plead the misnomer by a plea in abatement. His failure to do so and his election to proceed to trial without raising the question bars him from attempting to raise it for the first time by a motion in arrest of judgment." (Ends reading.)

That shows that an amendment in this case can properly be allowed and that is only a matter of form and under the rule I think it is clear it should be allowed. Now, I have the case of United States against Empire Hat and Cap Manufacturing Company, which cites this Fawcett case I have just read.

I think the defendant caused us a lot of unnecessary trouble and I move for the amendment to be allowed.

Mr. ROBERTS: The alleged non-existent defendant opposed the amendment being allowed, and the Dania Supply Company, who is just attempted to be brought in at the end of the Government's case likewise opposes the amendment.

If the Court please, that first case I think has no bearing at all on the issues involved. To begin with, as I recall Mr. Botts' citation there, that involved the question of whether or not the indictment could be amended before the plea had been entered. But we have this question here. The jury has been sworn and all defendants have been placed in jeopardy. We also have this situation. The law is not analogous between names of individuals and
307 names of corporations. Corporations are creatures of statute—individuals are not.

I would like to read from Section 95a under the title of "Variance" in Wharton's Criminal Evidence. It is held generally that: (Reading) "The name of a corporation must be accurately averred. Apart from its correct legal name, a corporation has no such entity as to be answerable at law or otherwise, than by its legal designation.

An averment of a corporate name cannot be amended by the change of one word for another, such as 'Railroad,' for 'Railway,' and the variance is fatal.

But, where a corporation has independent departments, doing business as such, or branches for its own convenience designated by and recognized by a particular name, the averment of the name of such departments or branch is sufficient to implead the entire corporation, where the corporation appears to defend the suit. Under such circumstances, a failure to show a misnomer at the proper time concludes it.

Where an offense is committed by corporate authority, the individuals concerned in the commission of the offense must be indicted as persons and not as a corporation.

But where corporations are proceeded against, as for disobedience of a statute,"—and I understand they are attempting to proceed against a corporation for disobedience of a statute—"or a neglect of duties imposed, it must
308 be indicted by its corporate name, which name must be accurately averred as it existed at the date of the offense." (Ends reading)

If the corporate name is correctly described, the fact of corporation must also be averred.

I will read now from 14 Corpus Juris, 309: (Reading)

"* * * where an act creating a corporation gives it a corporate name, this is an essential part of the act and an express legislative statement of intention that the name shall be as there given, and the corporation cannot, unless authorized by the legislature, properly assume any other name or have several names at the same time by usage; and that when a corporation is organized under a general law, the name stated in its charter or certificate of incorporation as required by the statute is its only proper name, and it cannot change its name without legislative authority or assume any other name and thus acquire several names by user or reputation." (Ends reading)

I respectfully submit to your Honor, particularly on the strength of where it says a corporation must be indicted by the name given to it by the legislature, that the situation is not the same where an individual comes up before your Honor and enters a plea of not guilty and then goes to trial and later on tries to raise the question that he hasn't been indicted by his proper name. In this case, the Linds-
309 ley Lumber Company, non-existent, never was before the Court; a non-eistent corporation could not very well enter a plea. That is why is had to stand mute.

I respectfully submit to your Honor that this is the wrong time to allow the amendment of an indictment in such a material matter; that what we are actually trying to do now is bring in a new party, the Dania Supply Company, in the Federal Court, practically at the time of the close of the Government's case.

I respectfully submit that the motion should be denied and your Honor should instruct an acquittal.

Mr. Botts: This is in 18 Corpus Juris Secundum, under "Corporations": (Reading)

"Under some authorities, a corporation, even when a name is stated in its charter or certificate of incorporation, may, in the absence of statutory provision to the contrary, assume another name by which to contract or do business,

without violating the rule that a corporation cannot abandon its corporate name and substitute another except by an amendment to its charter, and it will be protected in the use of the assumed name to the same extent as an individual would be, so that contracts or deeds made in such name will be binding. In such cases, the identity of the corporation may be established by the ordinary methods of proof." (Ends reading)

It applies even though they were not commonly
310 known by that name, but it is not a matter of dispute that the corporation in this case has been known and is doing business under that very name.

I haven't a case from our Fifth Circuit, but I do have a case by the District Court of Georgia, written by Judge Sibley, and he says: "In fact, however, it is not the name, but the person, who is prosecuted and sentenced, and the defendant, like a rose, may be dealt with under any name, provided he doesn't make a true and proper and timely objection to it."

In this case there is no shadow of doubt that this defendant has been doing business under that name. It was not deceived; it knew exactly what it was going on, and it sought by this method—it didn't even come in and advise us ahead of time by a plea of abatement. Had it done so, we would have made the motion then. But we didn't know it, and we made it at the earliest possible moment, and I think it would be a miscarriage of justice not to amend it at this time.

*Ruling on motion to amend indictment*

The COURT: Gentlemen, I am inclined to the view that the Government is right. The act of the Court will be to overrule the motion of the defendant, Lindsley Lumber Company, for a directed verdict, to which counsel for the defendant, Lindsley Lumber Company, excepts; and to grant the motion of the Government to amend, to which action the defendant also excepts. My action just
311 announced does not preclude this defendant from renewing its motion at the conclusion of the evidence. Bring in the jury.

(Jury returns to court room.)

312 ELIZABETH MURPHY was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. CUSHMAN:

Q. What is your name, please?

A. Elizabeth Murphy.

Q. Mrs. Murphy?

A. Yes.

Q. Were you formerly Elizabeth Lackner?

A. Yes, I was.

Q. On March 31, 1947, where were you employed?

A. I was employed by Mr. Taylor, the county solicitor.

Q. The county solicitor of Dade County, Florida?

A. That is right.

Q. In your position in Mr. Taylor's office, was it part of your duty to take shorthand notes of statements given from time to time in connection with investigations being conducted by the county solicitor's office?

A. Yes.

Q. Did you take shorthand notes of an investigation conducted in the office of the county solicitor of Dade County, Florida on March 31, 1947, at 1:30 p. m.?

A. Yes, I did.

Q. After you had taken the shorthand notes, did
313 you transcribe the notes in the form of a transcript?

A. Yes.

Q. Do you have the transcript with you ?

A. Yes, I have it right here.

Q. Look at Page 13 of that transcript, and tell me whether it discloses any testimony given by one, Henry B. Giroux?

A. Yes.

Mr. BOTTS: To save time, I will concede that that is a correct transcript. You may file it here, and wherever pertinent—

Mr. CUSHMAN: We would like to have the testimony as recorded by this young lady of Henry B. Giroux filed and admitted in evidence.

Mr. BOTTS: I am not willing for it all to be read; only those portions concerning which they laid the ground for impeachment. That is the only ground I concede to be proper, and I am willing that those portions be read at an appropriate time. I merely concede the accuracy of the transcript for that purpose.

Mr. CUSHMAN: All right.

(Whereupon, the document above-referred to was marked Defendant's Exhibit No. 9 and received in evidence.)

Mr. CUSHMAN: That is all.

(Witness excused.)

314 R. M. VOLLMER was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. CUSHMAN:

Q. What is your name, please?

A. R. M. Vollmer.

Q. Your address?

A. 2261 S. W. 19th Terrace, Miami.

Q. Do you hold any position with the police department of the City of Miami, Florida?

A. I do.

Q. State that position, please.

A. Acting Supervisor of the Technical and Record Section.

Q. In that capacity, are you in charge of the records of the police department?

A. The larger per cent of them—yes.

Q. Mr. Vollmer, when a person is arrested and placed in the city jail, is there a record made at the time of that occurrence?

A. There is.

Q. Tell me, please sir, if this is the type of record that is employed for that purpose.

A. This is the investigation arrest card made at the time of arrest, carrying a docket number, charge,
315 time, date and officers' names and other pertinent data.

Q. Is that kept in the regular course of the transaction of the business of the police department?

A. That is correct.

Q. And is that ultimately forwarded to your department as one of the records of the department?

A. That is correct.

Q. And kept in the records under your supervision and control?

A. That is right.

Mr. CUSHMAN: We offer in evidence the record which has been identified by the witness and ask that we be allowed to substitute a photographic copy of the original.

Mr. Botts: To whom does that refer?

Mr. Cushman: Henry Priest.

Mr. Botts: I have no objection.

(Whereupon, the document above-referred to was marked Defendant's Exhibit No. 11 and received in evidence.)

Mr. Cushman: Gentlemen, I hand you this card. It is a card that says, "Name, Henry W. Priest; color-sex, white male; aged 49; nativity, Florida; occupation, truck driver; height, 5' 8¾"; weight, 147; hair, blond; eyes, blue; complexion, medium; arrested by J. Williams and J. Avery, 3-28-47; arrested at NW 17th Ave. and 38th Street; time, 4 a. m.; released, 3-31-47."

316 By Mr. Cushman:

Q. Mr. Vollmer, as a part of the records of the police department, is there a record made of reported assaults and investigations connected with such reports?

A. There is.

Q. In that connection, is there kept as a part of such a report, the report of any physician who may have examined the complaining party at the time?

A. There is.

Q. Tell me, please sir, whether you have any record of such a report in connection with one, Chester Robinson?

A. I do.

Q. Will you produce the original, please sir?

A. This is the original report of the assault, made on the conventional form.

Q. Do you have a formal doctor's report in connection with this?

A. I have here the injured prisoner report card, which is a follow up from the hospital on all prisoners that are taken to the hospital for treatment and any observation.

Q. Do you also have a report from the hospital and the doctors who made the examinations, which is a part of this same report?

A. Yes, I do.

317 Q. Will you let me have that? Do these three papers you have handed me comprise the record of the police department in connection with this particular matter?

A. It does.

Q. And are these the records of the police department that are kept in the regular course of business?

A. That is correct.

Q. Part of the regular business?

A. That is correct.

Mr. CUSHMAN: We offer in evidence the three documents referred to and ask permission to substitute for the originals, photographic copies which we have readily available here.

Mr. BOTTS: I would like to see the documents. I have no objection to the substitution.

If your Honor please, we object to each of these documents on the ground that; first, that the doctor alleged to have made the examination is the proper person to call to prove the facts alleged to have occurred, and that the method used is not the proper method. That is, with reference to—will you mark this?

(Whereupon, the document above-referred to was marked Defendant's Exhibit No. 11 for identification.)

Mr. BOTTS: That is as to document No. 11. Will you mark this?

318 (Whereupon, the document above-referred to was marked Defendant's Exhibit No. 12 for identification.)

Mr. BOTTS: —as to No. 12, on the grounds heretofore alleged with reference to No. 11, and on the further ground that this is entirely hearsay; that it purports to be a finding of a doctor, yet it is signed by one, F. H. Shepherd, whom we do not know, and has no authenticity as the findings of the doctor; and on the grounds previously stated, that the doctor would be the best and only proper witness.

Will you mark this one, please?

(Whereupon, the document above-referred to was marked Defendant's Exhibit No. 14 for identification.)

Mr. BOTTS: As to No. 13 on the grounds stated as to No. 11, that the doctor is the best evidence, and that he should be produced.

The COURT: Overruled. They may be admitted.

(Defendant's Exhibits No. 11, 12 and 13 received in evidence.)

Mr. CUSHMAN: Gentlemen, here is the first one that I want to read to you. It has been marked as Defendant's Exhibit 12. It is on the form classification "Assault; Division of Police, Report of Homicides, Assaults, or Miscellaneous Injuries, City of Miami, Florida; File No. 41735;

Name, Chester M. Robinson, Color-sex, white male;
319 occupation, salesman; where employed, Lindsley Lumber Company; description of injury and how wounded, claims beaten by officers; condition, good; location committed, city jail; date and time committed, 3/29/47 about 2:50 A. M.; injured taken to Jackson Memorial Hos-

pital; date and time, 3/29/47 4:05 P. M.; taken by Car #27 patrol W.; address, M.P. Dept.; Attended by Dr. Becksted; address, Jax, M. Hsptl.; weapon used, said to be hose; where found, not located; weapon turned over to, not found; date and time 3/28/47, 2:50 A. M.; patient says detectives beat him. Ptl. T. H. Shepherd, date 3/29/47, time 4:30 P. M."

And on the back of the report, it has: "Arrest Record, Chester M. Robinson; Date, 3/29/47; Arresting Officers, Dects. Detailed Report—Give complete account including story obtained from injured person if in condition to be interviewed. In a felony, obtain statement from complainant and have complainant sign his statement, also get statement from each witness and signatures. In any report, officer making this report must not fail to state his source of information even though it is his own statement. Common error of all officers is failure to determine if victim, or complainant, desires to prosecute and advise them where to obtain warrant.

This man was arrested by Dects. and booked at city jail at 2:50 A. M.

Today he claimed that he was beaten by the officers when arrested and as a result his heart was in bad shape and his back was giving him trouble.

Dr. Becksted gave the man a very careful check up and found nothing wrong. His back showed no welts or bruises. Signed—F. H. Shepherd."

I will pass that to you, gentlemen, for your examination. The next one is a form on the police department records, City of Miami, Florida—"Division of Police. Injured Prisoner Report. Name of Prisoner, Chester M. Robinson; Arrest No. 73319; Has the prisoner an alcoholic breath? No.; Nature and extent of injuries. None.; Treatment given. Checked.; In my opinion this prisoner may be held in the Miami City Jail without endangering his life or health.—R. J. Becksted; Time entered hospital, 4:05 P. M.; date 3/29/47; Time discharged 4:30 P. M.; date 3/29/47; Hospital, Jax. M. Hsptl.; Officer making report, F. H. Shepherd."

And the last one is a report on the form provided by the Jackson Memorial Hospital, Progress Record. It says: "To Whom it may concern—Chester B. Robinson, a City Prisoner, was brought to me complaining that he was beaten up and wanted his heart checked and body checked for bruises.

On examination there was no clinical cardiac pathology noted.

The patient had a slight bruise in the left infraclavicular area but no other bruises were noted.

On questioning the patient as to whether he wanted further examination, he stated he did not. He only wanted to be checked for bruises and possible injury to his heart 'from being beaten.'

R. J. BECKSTED, M. D.

N.B. If this case should be brought to trial a more complete examination accompanied by laboratory and X-ray workup would be needed.

R. J. BECKSTED, M. D."

Mr. BOTTS: You referred to some medical term or location there. Have you checked to find out what that means?

Mr. CUSHMAN: "Infraclavicular area"? I am told that means—

The COURT: I don't think that is proper, gentlemen.

By Mr. CUSHMAN:

Q. Mr. Vollmer, as a part of your duties in charge of the records of the police department, do you have a record showing the attendance of members of the police force on duty on certain days or on every day that they are on duty?

A. That is correct.

Q. Do you have a record covering the date of the 26th of March, 1947?

A. I do.

Q. Does that record disclose whether or not Charles R. Ford was on duty at his post of duty on that day?

322 A. It does.

Q. Will you let me see it, sir? You have handed me a record and a photostatic copy, is that correct?

A. That is correct.

Q. Is this a record which is kept daily as a part of the regular course of business of the department?

A. It is.

Mr. CUSHMAN: We offer the record in evidence and ask for permission to substitute the photostatic copy.

Mr. BOTTS: I have no objection to either the record or the substitution, but I would like to examine it.

By Mr. CUSHMAN:

Q. I notice and call your attention to the fact that in the column along the outside edge next to each name, there are different letters—"E", "P" and "V". What do those letters indicate, please sir?

A. The letter "P" indicates that the person is present at that time, on duty. "E" indicates that the person had the day off—he earned a day off; and "V" denotes vacation.

(Whereupon, the document above-referred to was marked Defendant's Exhibit No. 14 and received in evidence.)

Mr. CUSHMAN: Gentlemen of the jury, here is the daily attendance report for the 26th of March and I have marked Ford. They are in alphabetical order, and I hope
323 you can make that out—it isn't very clear.

By Mr. CUSHMAN:

Q. Are these reports for the 27th and 28th similar to the one you just identified for the 26th?

A. They are.

Mr. BOTTS: You may file them without objection and file copies.

(Whereupon, the documents above-referred to were marked Defendant's Exhibits No. 15 and 16 and received in evidence.)

By Mr. CUSHMAN:

Q. I notice on the 27th, Ford is marked "P"—that means "Present" I believe you said.

A. That is correct.

Q. And on the 28th, the mark opposite Ford's name on that day is "E". I believe you said that is an earned day off, is that right?

A. That is right.

Mr. CUSHMAN: We have no further questions.

Cross Examination.

By Mr. BOTTS:

Q. Referring to Defendant's Exhibit 12, which I will hand you so you will have in mind the document, I note that that purports to be signed—what I will call the back. Is there one sheet, using back and front?

324 A. One sheet, using back and front—that is correct.

Q. This is signed by F. H. Shepherd. Who is Mr. Shepherd?

A. He was the patrolman assigned to the hospital. The officer assigned to make and take those records.

Q. Do you know whether or not in the ordinary course of business this assigned officer does his report only on what he hears, or how is it made up?

A. From questioning the person injured and from the doctor's information.

Q. Is this for the information of your department? A. That is correct.

Q. And not intended as a basis for testimony, necessarily?

A. No.

Mr. Botts: That is all.

Mr. Cushman: Are these the reports that the department relies on in their investigation of various offenses?

The Witness: That is right.

Mr. Cushman: That is all.

(Witness excused.)

James O. Barker was called as a witness, and being first duly sworn, was examined and testified as follows:

325 Direct Examination.

By Mr. Cushman:

Q. What is your name and address?

A. James O. Barker, 2271 S. W. 20th Street, Miami, Florida.

Q. Are you connected with the police department of the City of Miami?

A. I am.

Q. How long have you been connected with the department?

A. I am making twenty-four years now.

Q. What position do you hold now, Capt. Barker?

A. Chief of Detectives.

Q. What position did you hold on March 28, 1947?

A. Captain of the Detectives, in charge of the identification section.

Q. Did you hold that same position on the 26th and 27th of March, 1947, and the 28th?

A. I did.

Q. On March 26th, 27th and 28th, were you acquainted with Charles R. Ford?

A. Yes, sir.

Q. Was he in your department?

A. He was.

Q. He was in the identification department of the
326 police department of the City of Miami, is that correct?

A. That is correct.

Q. And were you his superior officer?

A. That is correct.

Q. Are you able to tell us what hours Mr. Ford worked on the 26th or 27th of March, 1947?

A. He was on the afternoon shift at that time. We only operated two shifts, at that time. We opened the bureau at seven in the morning and remained open continuously until eleven p. m.

Q. Did you ever have occasion to assign Mr. Ford to any investigation at the Lindsley Lumber Company yards?

A. Yes, sir.

Q. Do you remember, please, sir, on what date it was and the hour at which you made that assignment?

A. It was on the 28th of March, 1947.

Q. Do you recall, please sir, how it was done?

A. Ordinarily that case should have been assigned to the detective division. However, they were very busy and had a shortage of men at that time and I took it on myself to furnish a man for this investigation at the request of Mr. Williams, who stated to me that he had uncovered some irregularities at the Lindsley Lumber Company, and it was conceivable that an arrest might have to be made.

Q. Do you remember what hour of the day you got
327 in touch with Mr. Ford, or how you got in touch with him?

A. It was in the afternoon. I don't remember definitely. It was before dark, and it was his day off, as I recall, and I instructed him to stand by—that Lindsley would get in touch with him and instruct him what he wanted to do.

Q. Had you had any call from the county solicitor's office about the matter, Capt. Barker?

A. I had.

Q. When had you received that call, please sir?

A. I am sorry I am unable to give you an exact time. I would say it was probably the same day.

Q. That is the office of Robert P. Taylor, County Solicitor of Dade County, Florida?

A. That is right.

Q. What had the office of Robert Taylor called you about?

Mr. Botts: If your Honor please, I question the admissibility of that. I don't see the materiality and I think it is incompetent and hearsay.

Mr. Cushman: If the Court please, I suggest it is material for the reason that the purpose of the testimony is to show that Mr. Ford went out there, not at his own voli-

tion, but in response to directions from his superior officer, who in turn had been requested to furnish someone by another law enforcement officer of Dade County, Florida. And it is for the purpose of dispelling any idea that Ford went out there pursuant to any arrangements.

The COURT: Proceed.

By Mr. CUSHMAN:

Q. Did you receive a call from the county solicitor's office?

A. Yes, sir.

Q. Tell us what it was and the effect of it.

A. Mr. Maer, an assistant solicitor in that office, called me and stated that certain information had been laid before him and it was not completed; that it required some additional investigation, and it was the province of the police department to conduct such investigations to assemble the case to a point to where it would be suitable for possible prosecution. And it was with that thought in my mind that I cooperated with the county solicitor's office.

Q. And pursuant to that request and the request of Williams, is that the way you happened to send or assign Ford to the matter?

A. That is the way.

Q. Did you act, in assigning Ford to the matter, as his superior officer in the department?

A. I did.

Q. How long has Mr. Ford been a member of the department, Capt. Barker?

329 A. It is several years—I would say ten or eleven years.

Q. In the course of that time, have you been acquainted with him?

A. Yes.

Q. Have you had an opportunity to observe his work?

A. I have. He was under my supervision for several years.

Q. Are you acquainted with his general reputation in the department and the community where he lives as a law abiding and courteous officer?

A. I am.

Q. Tell me, is that reputation good or bad?

A. It is good.

Mr. CUSHMAN: That is all.

(Witness excused.)

330 CHARLES R. FORD being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. CUSHMAN:

Q. What is your name, please sir, and where do you live?

A. Charles R. Ford; 2500 South Dixie Highway, Miami.

Q. Is that down in the Coconut Grove section of Miami?

A. Yes, sir.

Q. You are one of the defendants in this case, are you not?

A. Yes, sir.

Q. How old are you?

A. Thirty years old.

Q. How long have you been connected with the police department, of the City of Miami.

A. Approximately ten years.

Q. What position do you hold now?

A. A uniformed police sergeant.

Q. What position did you hold in March, 1947?

A. I was a patrolman.

331 Q. In what department of the police department were you assigned at that time?

A. To the identification bureau.

Q. Who was the head of that bureau, please sir, and your superior officer?

A. Capt. James O. Barker.

Q. Is he the witness who just testified?

A. He is.

Q. Where did you live on March 28, 1947?

A. I lived at 2960 Bridgeport Avenue, Coconut Grove.

Q. Down in the same part of the city where you live now?

A. Approximately five blocks further west from where I am living now.

Q. Did you live there with your family at that time?

A. Yes, sir, I did.

Q. Mr. Ford, where were you on March 26, 1947?

A. Between three in the afternoon and eleven at night, I was on duty in the identification bureau.

Q. At the police station?

A. At the police station.

Q. On the 26th of March, 1947, did you go out to
332 the Lindsley Lumber yard?

A. No, sir.

Q. Did you know at that time that any kind of an investigation was going on at the Lindsley Lumber yard?

A. No, sir.

Q. Did you see John Sturniolo on March 26, 1947?

A. No, sir.

Q. Mr. Henry B. Giroux testified yesterday that on March 26, 1947, you were out at the Lindsley Lumber yard at an occasion when John Sturniolo was questioned. Were you out there at that time?

A. I was not.

Q. What time did you say you went to work that day.

A. At three p. m.

Q. I believe Mr. Giroux stated that it was around five-thirty p. m., when Mr. Sturniolo was questioned on that day. Were you at the police station at that time?

A. I was.

Q. On duty in the police station?

A. In the identification bureau, yes, sir.

Q. Tell me, please sir, whether at that time on March 26, 1947, were you acquainted with Jay G. Williams?

333 A. Yes, sir.

Q. Had you seen him that day?

A. No, sir.

Q. Had you had any communication from him at all about any investigation that was in progress at the Lindsley Lumber yard?

A. No, sir.

Q. Did you have anything to do with it, or know anything about it on that day?

A. No, sir.

Q. Or not on the 27th of March, on the following day?

A. From three in the afternoon, until eleven at night I was on duty.

Q. On that day did you go out to the Lindsley Lumber yard?

A. No, sir.

Q. Did you know anything about an investigation in process out there?

A. I did not.

Q. Had you been communicated with by anyone concerning any such investigation?

334 A. No, sir.

Q. Did you see Henry W. Priest on March 27, 1947?

A. No, sir.

Q. Did you see Mrs. Priest on the night of March 27, 1947?

A. No, sir.

Q. Were you with Williams, Perry, Bombaci or Giroux at any time on March 26 or 27, 1947?

A. No, sir, I was not.

Q. What were you doing on March 28, 1947?

A. That was my regular day off and I was home.

Q. Did you receive any call from your superior officers?

A. Yes, sir.

Q. From whom, please sir?

A. From Capt. Barker.

Q. Do you know about what time of the day you received the call?

A. It was approximately four p. m.

Q. Where were you?

A. I was at home.

Q. Who was with you at home?

335 A. My wife.

Q. I understand that she has since died, is that correct?

A. Yes, sir.

Q. You say it was about four o'clock in the afternoon?

A. Yes, sir.

Q. Tell me, please sir, what Capt. Barker told you in that telephone call.

A. He told me that Mr. Williams and Mr. Perry would stop by later on. He told me to stand by; that they would stop by and I was to go with them on an investigation they were making.

Q. Did he tell you anything more than that?

A. No.

Q. Is that the substance of what he told you?

A. That is the substance of what he told me.

Q. At that time had you heard anything from Williams or Perry about any investigation they were making?

A. No, sir.

Q. Did you know anything about such an investigation?

A. No, sir, I did not.

336 Q. And up to that time, as I understand it, you had had nothing to do with it, is that right?

A. That is right.

Q. Did you remain at home?

A. Yes, sir.

Q. Did anyone come to the house?

A. Yes, sir. Mr. Perry and Mr. Williams.

Q. Can you tell me about what time they arrived?

A. It was between five and five-fifteen p. m.

Q. What did you do then?

A. We got in the car, and started toward the Lindsley Lumber Company.

Q. Have you any idea how long it took you to reach the Lindsley Lumber yard from your home in the Coconut Grove section?

A. Maybe twenty-five or thirty minutes.

Q. What time did you arrive out there at the Lindsley Lumber yards, to the best of your knowledge, please sir?

A. Between five-thirty and five-forty-five.

Q. In the afternoon?

A. Yes, sir, in the afternoon.

337 Q. Was it daylight at that time?

A. Yes, sir.

Q. Where did you go?

A. We went to the north side of the main building of Lindsley Lumber Company.

Q. What side of 17th Avenue?

A. That is on the west side of 17th Avenue.

Q. Did you see anyone there?

A. No, sir, not on the outside.

Q. Where did you go?

A. We went into an advertising house on the north side of the property, on the north side of the main building. It is a display room, and we went inside.

Q. Had you ever been there before?

A. No, sir, I had not.

Q. And that was five-thirty or a quarter of six on the afternoon of March 28, 1947?

A. Yes, sir.

Q. When you got there, Mr. Ford, and went into the paint shop or paint shed, who was there?

A. Mr. Giroux and Mr. Purnell.

Q. Nobody else?

A. No, sir.

338 Q. How about Mr. Bombaci?

A. No, sir, he was not there.

Q. Did you go into the paint shed alone, or did Perry and Williams go in with you?

A. The two of them went in with me—Perry and Williams.

Q. After you had gone into the paint shed, tell me the names of everyone who was in the paint shed.

A. Mr. Giroux, Mr. Purnell, Mr. Perry, Mr. Williams and myself.

Q. How about Mr. Yuhas?

A. I believe Mr. Yuhas came in a few minutes after we arrived.

Q. Mr. Purnell has testified, as I recall it, that he went into the paint shop about four o'clock in the afternoon of that date, and when he got there, you were already there. Was that correct?

A. That was not correct.

Q. Where were you at four o'clock?

A. I was at home.

Q. After you got there, do you recall seeing Mr. Bombaci at all, after you got there?

339 A. Mr. Bombaci came in quite some time after we arrived.

Q. Do you know what time, or how long after you got there?

A. It was about seven-thirty, I imagine.

Q. Had he been there during any of them times you were there until seven-thirty?

A. No, sir.

Q. After you got there and had entered the paint shop or shed, tell me, please sir, what was going on when you got there?

A. We walked in and Mr. Purnell was sitting in the chair, and Mr. Giroux was in the corner, sitting at the desk with a pad in front of him.

Q. Was any conversation being had?

A. Mr. Giroux was talking to Mr. Purnell when we walked in. Mr. Williams asked Giroux what was going on and what he had learned. Giroux said, "Not much."

Q. Tell us, please sir, what happened after that?

A. Mr. Giroux started talking to Purnell. He told him who Williams was. I was introduced to the man I have found out is Giroux and Purnell. We talked to

340 Purnell and told him there had been stealing going on. As to Williams, Perry, and Giroux; they would show him the evidence they had gathered through the hours they had spent in the yards under cover. They told him that Mr. Priest had involved him in some of the stealing, so they wanted to get his side of the story. Mr. Purnell maintained his innocence. The rest of them kept hammering at him. I asked him a couple of questions.

Q. What were they hammering at him with?

A. With words. They kept interrogating him.

Q. Did they hit him with a stick?

A. No, sir.

Q. With any kind of a weapon?
A. No, sir.
Q. By the way, did you have any weapon on you?
A. No, sir. I had a 32-automatic in my right hip pocket. It was a gun I carried all the time, in plain clothes. It was concealed by a handkerchief.
Q. Did you have any other kind of a weapon?
A. No, sir.
Q. Any kind of club?
A. No, sir.
341 Q. Any kind of hose of any kind?
A. No, sir.
Q. Did you strike Purnell at any time?
A. No, sir, I did not.
Q. Did anybody strike him while you were there?
A. No, sir.
Q. Were you there all the time?
A. Practically all the time, with the exception of maybe fifteen minutes, a couple of time.
Q. What happened during the fifteen minutes when you were not there?
A. At one time I went to get a Coca-Cola, and the other time I went to make a telephone call.
Q. During the rest of the time, however, you were there?
A. I was present, yes, sir.
Q. During the time you were there, did I ask you whether anybody struck or beat Purnell?
A. You have, and no one did.
Q. Do you know what time Purnell left the shack, Mr. Ford?
A. Purnell was taken from the paint shed ap-
342 proximately at seven-forty-five, and he was placed in the automobile in the front.
Q. Who put him in the automobile?
A. I believe Mr. Williams, and I told him to sit in the automobile.
Q. What was done?
A. He sat in the front seat and I told him we wanted to discuss his case further. He wanted to know if we was going to put him in jail, and I told him "No," because he had admitted taking very minor stuff, and there was no need to put him in jail.
Q. Was he handcuffed?
A. He was not.
Q. Do you know about what time he went home?

A. He left the shed at approximately eight o'clock, maybe a little after, maybe a little before. Three or four minutes, either way.

Q. Do you know Chester M. Robinson?

A. I do now, yes, sir.

Q. Or John P. Sturniolo?

A. I do now, yes, sir.

Q. Were either Robinson or Sturniolo present in
343 the paint shed at any time when Purnell was there on the evening of March 28, 1947?

A. No, sir—neither one of them.

Q. Did you tell Purnell in substance or effect, or in any language whatever, that Robinson was in the shack and that if he had sense enough to come clean it would save him a lot of trouble, or anything to that effect?

A. No, sir, I did not.

Q. When did you first see Chester M. Robinson?

A. Approximately eight-thirty that night.

Q. Where?

A. At his home.

Q. You went there to his home?

A. Yes, sir.

Q. Who was with you?

A. I believe Mr. Perry and Mr. Williams were with me.

Q. Tell us, please sir, what happened when you got to his home?

A. I stayed in the car and I forgot which one of the men went to the door. They knocked at the door and told him he was wanted for questioning in regard to some stealing at the Lindsley Lumber Company, and he readily
344 went to the car and got in the back seat.

Q. Was he handcuffed?

A. No, sir.

Q. Was he beaten while he was in the car, or struck by anyone?

A. No, sir.

Q. When did you first see Sturniolo?

A. We went from Robinson's house to Sturniolo's, and I saw him when he walked to the automobile.

Q. Was he handcuffed?

A. No, sir.

Q. Where did he get in the car?

A. Between Robinson and myself.

Q. He was sitting next to you, and Robinson next to him?

A. Yes, sir, in the back seat.

Q. While he was in the car, was he struck or beaten by anyone?

A. No, sir.

Q. After you got down to the Lindsley Lumber yard, what happened, please sir?

A. We took Robinson inside, and I left Sturniolo in the car.

345 Q. Was he handcuffed?

A. Yes, sir, he was.

Q. At that time, tell me, please sir, whether Mr. Purnell was in the paint shed of the Lindsley Lumber Company, or not?

A. He was not there. He had already left.

Q. When you got there and got out of the car with Robinson, did you go into the shed?

A. Yes, sir.

Q. Who was there?

A. Mr. Giroux and Mr. Bombaci, and I believe Mr. Yuhas.

Q. Did you remain there during all the time that Robinson was in the paint shed?

A. Yes, sir.

Q. During that time, what went on, Mr. Ford?

A. The interrogation of Robinson started at approximately eight forty-five. They had read the statement to him that Priest had involved him in the stealing, and they also read him a report, and Giroux told him—the report where he had seen him pocket money with a 50% discount sale to customers, and he denied it. They kept throw-

346 ing the questions at him. The interrogation became quite heated. There was loud talk on both sides. Mr. Robinson finally broke down. He said he wanted to get clear with the world; that he was having trouble at home; he had two children and he wanted to make a clean breast of it, so he could be clear with the world.

Q. Was he struck?

A. He was not.

Q. Beaten?

A. No, sir.

Q. Did you strike him or see anybody else strike him in your presence?

A. I did not strike him or see anybody else strike him.

Q. What did Mr. Robinson state about his activities, so far as stealing was concerned?

A. Mr. Robinson told us his method was to meet a customer, gain his confidence, and then after he was a regular customer with Robinson for some time, he would give him

the proposition, "I will give you 50% off on all the merchandise you sell me but I will not give you a ticket."

Therefore, Mr. Robinson would pocket the 50%
347 the customer would give him, and the Lindsley Lumber Company would be out the price of the merchandise.

Q. Did Mr. Robinson make any statement as to the extent of his operations in that manner?

A. He estimated that over a period of time, he had stolen about $1500 worth. That is, 50% of the $3,000, so it would be approximately $1500 worth of merchandise.

Q. How long was Mr. Sturniolo kept out in the car, do you recall?

A. Approximately three hours.

Q. During that time, Robinson was in the shack?

A. Yes, sir.

Q. After Robinson had been questioned, what happened to Robinson?

A. Robinson was immediately placed under arrest. I took him out and handcuffed him, and put him in the automobile, and brought Sturniolo in.

Q. Into the shack?

A. Yes, sir.

Q. What happened to Sturniolo?

A. Sturniolo—I think it was Giroux that read his previous confession to him. It had been gained, I
348 understand now, on the 26th.

Q. Had you been present at the time it was gained?

A. No, sir, I was not.

Q. Had you had any knowledge of it at that time, except what you heard there?

A. No, sir.

Q. Go ahead.

A. He read the statement to Sturniolo, and he did not deny it because they had picked up numerous building materials from his home. And they asked him if there was anything else he wished to add to it, and he told them there was a roll of 90-pound felt, and one roll of hardware cloth. So that was added to the list of stuff.

Q. Did you strike Sturniolo?

A. No, sir.

Q. Beat him?

A. No, sir.

Q. Did anybody else strike him or beat him in your presence?

A. No, sir.

Q. Do you recall what hour you went home that night?
A. I imagine I got home about three-thirty.
349 Q. Mr. Ford, did you ever enter into any agreement or conspiracy of any kind with Jay Williams, Joseph Perry, John Bombaci, Henry Giroux, Andrew Yuhas or anyone else with reference to Sturniolo, Robinson, Priest or Purnell?
A. No, sir, I did not.
Q. Did you ever do anything to any one of those men, for the purpose or with the intent of depriving any of them of any civil rights they might have?
A. No, sir.
Q. When was the first time you ever saw Mr. Priest?
A. When he testified in this court room.
Q. When was the first time you ever saw Mrs. Priest?
A. When she testified in this court room.
Mr. CUSHMAN: You may inquire.

Cross Examination.

By Mr. BOTTS:
Q. Mr. Ford, I show you Government's Exhibits 2, 3, 4 and 5, which have been identified as pictures of Mr. Robinson taken on the 31st day of March, 1947. Do you observe any apparent bruised places on the body of Mr. Robinson as exhibited by these pictures?
A. I see some marks there, yes, sir.
350 Q. And the same applies with respect to the Exhibits 4 and 5?
A. Yes, sir.
Q. Now, I direct your attention to Government's Exhibit 7. It is identified as a picture of Mr. Sturniolo. Do you observe some marks or bruises on the back of his right arm?
A. Yes, sir.
Q. Mr. Ford, can you at this time offer any explanation as to how those marks could have appeared on the picture or existed on the person of those men?
A. No, sir, I cannot.
Q. You don't have the slightest idea?
A. No, sir.
Q. Do you know whether they were beaten after they arrived at the police station?
A. No, sir, I do not.
Q. You mean you don't know?
A. I don't know.
Q. You are not suggesting, however, that they were?
A. No, sir.
Mr. BOTT: That is all.
(Witness excused.)

351 JOHN S. BOMBACI being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. LETTS:

Q. Will you state your name, please?

A. John S. Bombaci.

Q. Where is your home?

A. Centerbrook, Connecticut.

Q. Will you state to the jury and this Court the circumstances surrounding your presence in Florida during the early part of 1947?

A. I was sent down here by the Veterans' Administration Hospital where I was in Connecticut to the Nautilus Hospital, Miami Beach, Florida.

Q. What happened upon your arrival in Florida? What condition did you find the hospital in?

A. The hospital was crowded and they couldn't accept me at that particular time.

Q. Were you given any treatment by the hospital?

A. Yes, sir, I was.

Q. Will you tell the jury and the Court exactly what treatment it was?

352 A. I received treatment for a dislocated pelvis. The treatment was light, and rays, and rubbing and massages, etc.

Q. Were you instructed to wear a brace on your back, covering you?

A. When I got down to the General Nautilus Hospital, they applied a plaster of Paris cast on me, that extended from my neck to about here, (indicating) and it was solid all the way around.

Q. How much freedom of movement did that give you?

A. It gave me very little freedom of movement. I couldn't even tie my shoes, and I had to wear moccasins all during the time I wore the brace.

Q. Was this injury a result of a service-connected injury?

A. Yes, sir, it was.

Q. What was your capacity in the armed services?

A. I was an airplane pilot.

Q. How long were you in the armed services?

A. Three years, and eight months.

Q. Were you honorably discharged? A. Yes, sir, I was.

353 Q. When were you first employed by the Continental Detective Agency?

A. About the end of January, 1947. I am not certain of the date, but I think it was around the end of January.

Q. How did that employment come about?

A. When they could not take me into the hospital, they either had to give me a hospital bed they had there for emergencies, or they had to board me out in town somewhere at the expense of the Government. And they couldn't find anything then, and they hee-hawed around, and finally said I had better get a place for myself, which I did. They also told me to report to the V.A here in town, which I did. And they proceeded to find employment for me, that I could do while I was in that condition at that time. And they sent me to the Continental Detective Bureau, Congress Building Miami, Florida.

Q. As I understand it, the Veterans' Administration actually obtained the employment for you?

A. At the Veterans' Administration, first they called up on the telephone, and then they sent me over to the Continental Detective Agency.

Q. Was it understood at that time that that
354 employment was to be of a limited nature?

A. Yes, it was.

Q. Were you employed by the Continental Detective Agency on March 26, 1947?

A. Yes, sir, I was.

Q. Do you remember or recall what your assignment was at that time?

A. Yes, sir, I do.

Q. I hand you what purports to be a "confidential report" filed with the Detective Agency, addressed to the "Time Loan Company, Tampa, Florida, E. E. Kangas." And on the bottom, "August 17, work this," and the initials, "JGW." Are you familiar with that report?

A. Yes, I am.

Q. Will you refresh your memory and tell the Court and jury what your assignment was on March 26, 1947?

A. On March 26 at 11:50 a. m., I had a telephone conversation with Mr. E. E. Gangas, of the "Time Loan Company" at Tampa, Florida, concerning a" 1942 Buick, two-door sedan, Motor No. 4496196-5, Tag E. 751, owned by Jack and Mae Smith; owe, $1500.00. Arrange to have it
picked up and notify Time Loan Company as soon as
355 you have located it. Subjects are working with some vending machine company known as the Cavalcade of America."

And I went and searched for this Cavalcade of America.

Q. You were assigned to the case concerning the Time Loan Company and this automobile on March 26, 1947?

A. Yes, I was.

Q. Attached to the back of this report, do you see a letter addressed to the Continental Detective Agency and signed, "E. E. Kangas"? Was this your authority to pick up this car?

A. Yes. This is the authority they gave me to pick up this 1942 Buick.

Q. That was your job on March 26?

A. Yes, it was.

Q. Did you have any connection on March 26, with the matter that has been testified to concerning the Lindsley Lumber Company?

A. No, sir.

Q. Did you, on March 26, see any of the other defendants in this case? Mr. Williams, Mr. Perry, Mr. Yuhas and Mr. Ford?

A. I didn't know Mr. Ford at the time. Whether
356 I saw Mr. Williams in the office that day, I do not recall.

Q. That was the office of the Continental Detective Agency?

A. Yes.

Q. What was the occasion that you were in the office?

A. To pick up my assignment.

Q. I hand you another "confidential report", dated March 27, 1947, signed by Agent No. 17. Was that your designation at that time?

A. Yes, sir.

Q. This report is written in handwriting. Do you recognize your handwriting?

A. That is my handwriting.

Q. Will you refresh your memory and tell the Court and jury what your assignment was on March 27, 1947?

A. On March 27, 1947, I had a similar assignment as I did on March 26. I couldn't say the people named in it, I had telephoned to Tampa, Florida, and they sent me authorization that these people were with another amusement company. I searched Miami, and I had discovered that that particular amusement company was at that particular time in Mobile, Alabama.

357 Q. Did this case have anything to do with, or any connection with the matter testified to concerning the Lindsley Lumber Company?

A. No, sir.

Q. Were you at any time on March 27, connected with the matter concerning the Lindsley Lumber Company?

A. No, sir.

Q. Had you completed this investigation concerning the Time Loan Company on March 28?

A. I completed it on March 28.

Q. Approximately what time of day?

A. If I remember correctly, the report was typed out at 1:30.

Q. And you were in the office of the Continental Detective Agency at that time?

A. Yes, sir, I was.

Q. Did you receive any other assignments at that time?

A. Yes, I did. Miss Helen Bramner, the secretary of the Continental Detective Agency, gave me an assignment to remain there and run the office the rest of that afternoon.

Q. What time did you leave the office of the Continental Detective Agency?

358 A. A few minutes within six p. m.

Q. What did you do after you left the office?

A I had supper. I went out and had supper.

Q Then where did you go?

A. I had to inquire about the whereabouts of Mr. Williams, and I discovered he was out on 17th Avenue, at the Lindsley Lumber Company office. I went out there after having supper.

Q. What time did you arrive at the office of the Lindsley Lumber Company?

A. I don't remember the exact time, but it would have to be between seven and seven-thirty.

Q. Where did you go upon your arrival at the Lindsley Lumber Company?

A. To the main office, of the Lindsley Lumber Company, right on 17th Avenue.

Q. Did they instruct you where to find Mr. Williams?

A. Yes, they did.

Q. Did you go there?

A. Yes, I did.

Q. Where did you find Mr. Williams?

A. I found him in the building that was next to the

359 main office, known as the paint shed.

Q. Did you enter this building?

A. Yes, sir, I did.

Q. At the time you entered, who was present?

A. At the time I entered that building, the door had just opened, and some men were coming out. I don't recall who they were now.

Q. Was it dark at that time?

A. It was just getting dark. It was early evening. I don't remember who was going out at the time, but in a few minutes, the gentlemen who were in that particular room were myself, Mr. Williams, Mr. Perry, Mr. Ford, Mr. Giroux and Mr. Yuhas.

Q. There was no one of the four complaining witnesses which you have heard in this case in the room at that time?

A. There was not.

Q. What occurred after that?

A. Within a few minutes after I arrived there, I saw Mr. Williams, and talked to him about the cases I had been working on and he introduced me to Mr. Ford and Mr. Yuhas.

Q. Prior to that time you were not acquainted with either of those gentlemen?

360 A. No, sir.

Q. Did you receive another assignment from Mr. Williams?

A. No, sir, I did not.

Q. Did you later receive another assignment from Mr. Williams?

A. Not that I recall.

Q. I hand you a report dated March 31.

A. March 31? This has to do with the Bailey case. I am not too familiar with what that particular case was.

Q. That is in your handwriting?

A. Yes, sir.

Q. Your testimony now is that you did receive a case later from Mr. Williams? Another assignment?

A. At a later date, I did.

Q. During the time you were present on the premises of the Lindsley Lumber Company the evening of March 28, 1947, did you observe any of the complaining witnesses being beaten?

A. No, sir, I did not.

Q. Exactly what was your capacity on those premises at that time?

361 A. At that particular time I didn't have any capacity at all on those premises, and I wasn't even asked out there. I went out to see Mr. Williams. I would say I was a casual observer. That is the way I would put it.

Q. Did you take any part in the questioning of these four gentlemen?

A. No, sir.

Q. Did you strike any of them?

A. No, sir.

Q. Did you observe anyone else strike them—any of them—in your presence?

A. No, sir.

Q. Did you at any time enter into any agreement or conspiracy with one or more of any of the other defendants in this case, Mr. Williams, Mr. Perry, Mr. Ford or Mr. Yuhas, concerning the treatment given the four complaining witnesses or concerning any matter involving the Lindsley Lumber Company?

A. No, sir.

Mr. LETTS: Your witness.

Direct Examination.

By Mr. CUSHMAN:

362 Q. When was the first time that you ever saw Mr. Priest, please sir?

A. The first time I ever saw Mr. Priest was in the court room the day before yesterday, when he sat in this witness chair and was asked the question, "Who beat you up?" And he mentioned some names, and he said there was others he didn't know, but he could see them from his chair. And he was asked to go down and put his hand on the shoulder of the people who was beating him and kicking him and jabbing him with a dowel stick, and shoving him and stomping him. And he went down to that empty chair there where I just left, and said "This is the man that beat me, and kicked me and shoved me and everything."

Q. Did you?

A. No, sir, I did not. I wasn't even there. That was the day I was working for the Time Loan Company, at Tampa, Florida.

Q. Did you ever see Mrs. Priest before she came in the court room?

A. No, sir.

Q. Mr. Giroux testified yesterday that you were present in the paint shack on March 26, 1947, when Sturniolo

363 was questioned. Is that true or not?

A. No, sir.

Q. He also stated you were present in the shack on the 27th of March, 1947, when Priest was questioned. Is that correct?

A. No, sir.

Mr. CUSHMAN: No further questions.

Cross Examination.

By Mr. BOTTS:

Q. Were you present when Mr. Robinson was being questioned?

A. Yes, sir, I was.

Q. Were you present when Mr. Purnell was being questioned?

A. That was on March 28 you are referring to? I was present March 28 when Mr. Robinson was questioned.

Q. Were you present at any time when Mr. Purnell was questioned?

A. No, sir, I was not.

Q. Were you present at any time when Mr. Sturniolo was questioned?

A. Yes, I was.

Q. When was that?

364 A. That was on the night of March 28, 1947.

Q. I hand you Government's Exhibits 2, 3, 4 and 5, the same being pictures of Mr. Robinson, and I will ask you if you observe on those pictures on the person of Mr. Robinson any marks or bruises?

A. I see some shady spots. I don't know whether they are bruises or what they are.

Q. You have in your hand Exhibit 5. Now, take No. 4 and I ask you if you see any marks on that?

A. I see some shady spots in several places, but I wouldn't say they were wounds or injuries or bruises. Of course, I don't know. I haven't seen it before.

Q. Take Exhibit 3.

A. This has got dark spots on it, the same as those have, but I wouldn't know what they are.

Q. Exhibit 2?

A. On this photograph I observe two marks that might possibly be injuries.

Q. I hand you Exhibit 7, a picture of Mr. Sturniolo, and ask you if you see any marks or bruises on the back of his right arm, between the shoulder and the elbow?

A. Yes, I do.

365 Q. Mr. Bombaci, I will ask you if you observed any occurrences in that paint—did you call it shack, or shed, or what?

A. I said it was referred to as a paint shed.

Q. Did you see any occurrences in that building which you refer to as the paint shed while you were there on March 28, that might have caused the condition which would show up as dark sports on the body of Mr. Robinson and as a bruise on the right arm of Mr. Sturniolo?

A. No, sir, I did not.

Q. Did any of those men fall while they were in there?

A. Not that I observed.

Q. Where was Mr. Robinson? Was he standing up or sitting down?

A. I don't just exactly recall. I do know they were talking to these men that were supposedly stealing lumber out there, and they had a chair they were sitting in.

Q. You say he was sitting in a chair?

A. I didn't say I was positive. I said that is where they were doing the questioning. I presume it was him sitting in the chair.

366 Q. The man that you saw there that day and identified as Mr. Robinson, was he sitting in the chair when he was being questioned?

A. That is something I do not know, because I don't remember.

Q. Was he standing up?

A. I don't remember.

Q. Was he either sitting down or standing up?

A. I don't rem mber.

Q. Did you ever see him lying down on the floor?

A. No, sir, not that I remember.

Q. Did you see Williams strike him?

A. No, sir.

Q. Did you see a leather covered instrument a foot long, and something like an inch in diameter with a sewed up seam on one side?

A. No, sir.

Q. Did you see Mr. Williams hit Robinson with that instrument?

A. No, sir.

Q. Did you see Williams hit Sturniolo with that instrument?

367 A. No, sir.

Q. Did you see Williams hit Robinson with his fist?

A. No, sir.

Q. Did he slap him with his hand?

A. No, sir.

Q. Did you see him giving him the rabbit punch with his first on the back of his neck?

A. No, sir. No, sir.

Q. Did you see that take place by Mr. Williams on Sturniolo?

A. No, sir.

Q. And you say you weren't there at all when Priest was being questioned?

A. No, sir, I was not.

Q. Did you see any actions or occurrences out there that could possibly have caused bruises or wounds on the person of any of the men you saw questioned there?

A. No, sir.

Q. Did you hear the questions asked?

A. Yes, sir, I did.

Q. Was it in on ordinary tone of voice, or loud? A loud tone of voice?

368 A. Very loud.

Q. Who was doing the questioning?

A. I don't remember who was at that particular time, but I do know that Mr. Williams, and Mr. Ford and Mr. Perry were conducting the questioning.

Q. Did they use a loud tone of voice in questioning?

A. Not to excess. I would say no—but it was rather loud.

Q. Was it loud enough so you could have heard it fifty or sixty feet away?

A. I wouldn't say so—no.

Q. You don't think so?

A. I don't think so.

Q. Did the person being interrogated answer in a loud tone of voice?

A. Yes, they did.

Q. Can you give any explanation of it?

A. I don't know.

Q. Did they yell?

A. I wouldn't call it yelling—no.

Q. Did they scream?

A. No, they did not scream.

369 Q. Did they protest at any time about being struck?

A. Not to my knowedge.

Q. You were there, weren't you?

A. I was there, but I wasn't in the room all the time.

Q. I am speaking of the time you were in the room.

A. No, they did not.

Q. Did any of these men protest as to the manner of the examination?

A. Not to my knowledge.

Q. I mean while you were there?

A. No, sir.

Q. Did any of them request Williams or anyone else to stop beating them?

A. No, sir.

Q. You heard Mr. Priest describe alleged physical abuses and beatings that were administered to him by you, did you not?

A. Yes, sir, I did.

Q. Is your recollection the same as mine, that he pointed to you and specifically identified you as one of the persons who beat him?

370 A. Yes, sir, I do.

Q. And you deny it?

A. Yes, I do.

Q. And you also deny that Mr. Williams beat Priest in your presence?

A. I wasn't there when he interrogated Mr. Priest. Therefore, it couldn't have been in my presence.

Q. You deny that?

A. I deny that I was there.

Q. You make the same denial with reference to Purnell?

A. Yes, sir.

Q. You heard Purnell identify you as being one of the persons there when he was alleged to have been beaten, did you not?

A. Yes, sir, I did.

Q. And you say that is not true?

A. That is not true.

Q. And you claim the only two persons who were there and questioned while you were there were Robinson and Sturniolo?

A. That is correct.

371 Q. And now, were you sitting down or standing up while you were in there?

A. While I was in that shed, there was a building—as you enter the door and to the left, that was like an office building. It was a very small room, maybe five by five. And I spent most of my time in that office building, in the office of that building, which was the paint shed.

Q. Do I understand that the building was divided into more than one room?

A. Yes, sir, it was.

Q. And when you first entered the room was it—did you enter into this small room you recall to be about five by five?

A. No. I entered into the large room. It was about fifteen feet wide, and approximately twenty-five feet long.

Q. And where was this small room that you have described as being five by five?

A. As you enter the door and to the left.

Q. Was it a rectangular place cut off out of the main building?

A. It was screened in and partially covered with boards and partially screened.

372 Q. Did you enter that small enclosure from the main room or from outside?

A. From the main room.

Q. And you say you spent most of your time in there?

A. Yes, sir.

Q. Why?

A. Because that shed was being used for an advertising building, and I kind of liked them and I was thumbing through them.

Q. You didn't go in there, by any chance, because the beatings that were being administered were repulsive to you, did you?

A. There was no beatings that were repulsive to me.

Q. Do you mean there were no beatings, or the beatings were not repulsive?

A. There were no beatings.

Q. What was your object in staying there if you were going to stay in that small room, thumbing through advertisements?

A. I didn't have any object when I went out there. I didn't have any object in staying out there.

Q. Why did you stay there?

A. That is a question I can't answer because I
373 don't know why I stayed there.

Q. Were you learning to be a detective?

A. You might call it that, yes.

Q. Were you interested to ascertain how your Chief secured confessions?

A. Not necessarily.

Q. By the way, did you ever observe Mr. Williams—did you ever observe his conduct elsewhere than at that shack? Did you ever observe him anywhere else?

A. Not outside of the office, no.

Q. When he was in the office, how did you and the other men address him?

A. We addressed him as "Chief Williams."

Q. At whose direction did you use that designation?

A. Mr. Williams's.

Q. He told you to call him "Chief"?

A. He didn't come out and tell us to address him as "Chief". I took it up automatically, and so did everybody else. He would be the Chief. Every organization has a Chief.

Q. Did you see him in the office with a gun on?

A. Not to my recollections.

Mr. PRUITT: I object on behalf of the Defendant
374 Williams on the grounds that it is prejudicial and has no connection with the matters at issue.

The COURT: Objection over-ruled. Proceed.

Mr. BOTTS: It is not intended to be helpful to him.

The COURT: Proceed, Mr. Botts.

By Mr. BOTTS:

Q. Did Williams carry a great, big 45 gun in a shoulder holster under his arm?

A. I never saw him carry a gun. They were kept in the gun cabinet in the office.

Q. How many guns did he have in there?

A. I don't remember.

Q. He had a lot of them, didn't he?

A. I wouldn't say there was a lot of them.

Q. What guns did he have in there?

A. I don't know.

Q. What guns did he have out there at the shack that day?

A. I don't know if he had any. I did not see any guns out in the paint shed.

Q. What did Mr. Perry do while you were out
375 there that day?

A. I don't recall every move he made. He did participate in the questioning of these suspects.

Q. Mr. Giroux sat over there with a pad and made notes?

A. He made notes, and Mr. Giroux also questioned these men out there.

Mr. BOTTS: That is all.

Re-cross Examination.

By Mr. CUSHMAN:

Q. On the 26th, 27th and 28th of March, 1947, were you a special officer acting under appointment of the Director of Public Safety of the City of Miami?

A. No, sir, I was not.

Mr. CUSHMAN: That is all.

(Witness excused.)

376 WALTER HEDLEY was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. CUSHMAN:

Q. What is your name, please sir, and where do you live?

A. Walter Hedley, 1176 S. W. 20th Avenue, Miami, Florida.

Q. Do you hold any official position with the city of Miami?

A. I do.

Q. State it.

A. Chief of Police.

Q. How long have you held that position?

A. Since August 11, 1948.

Q. Prior to that time, had you been connected with the police department of the City of Miami?

A. I was assistant chief of police since January 11 of 1948, and prior to that in various capacities for the past fifteen years with the Miami Police Department.

Q. During the time you have been connected with the police department over a period of fifteen years, have you become acquainted with Charles Ford, one of the defendants in this case?

A. I have.

377 Q. In your capacity as a police officer of the City of Miami and as an official of the police department, are you familiar with his general reputation in the police department and in the community as a law abiding and courteous officer?

A. Yes, I am.

Q. Is his reputation as such good or bad?

A. It is of the best.

Q. Are you familiar with his general reputation for truth and veracity?

A. Yes, I am.
Q. Is it good or bad?
A. It is very good.
Mr. CUSHMAN: That is all.
Mr. BOTTS: No questions.
(Witness excused.)

378 JAY G. WILLIAMS being first duly sworn was examined and testified as follows:

Direct Examination.

By Mr. PRUITT:
Q. What is your name?
A. Jay G. Williams.
Q. How old are you?
A. Thirty-four.
Q. Are you married?
A. Yes, sir.
Q. Any children?
A. Yes, sir, I have two.
Q. What are their ages?
A. I have a step son that is seventeen years old in the United States Navy, and I have a five-year-old daughter.
Q. Where are you living at the present time?
A. At the present time I live in Los Angeles, California.
Q. How long have you resided in Los Angeles, California?
A. Approximately two years.
379 Q. You formerly lived in Miami?
A. Yes, sir.
Q. When did you first move to Miami?
A. The latter part of 1943.
Q. Do you own property in Dade County?
A. Yes, sir, I do.
Q. The address, please?
A. I own a house at 9935 Little River Drive.
Q. Where is your family at the present time?
A. They are in Los Angeles, with the exception of my step son who is in the United States Navy.
Q. What business were you engaged in prior to leaving Miami?
A. I was the owner and director of the Continental Detective Bureau in the Congress Building.
Q. When did it first start operation or business?
A. The first part of 1944.
Q. Did you own and operate that business during the month of March, 1947?

A. Yes, sir.

Q. Were you at any time given a special police badge from the City of Miami—or rather, a special
380 policeman's card?

A. Yes, sir, I was.

Q. Were you at any time engaged in conducting business for Lindsley Lumber Company?

A. Yes, sir.

Q. During what period of time, if you recall?

A. I believe the complete investigation started approximately the first of 1947, I should say in January. I am not sure, but approximately.

Q. What was the nature of the investigation?

A. We were called by the Lindsley Lumber Company to investigate stealing that was going on in their various lumber yards. I was told by the Lindsley Lumber Company that several thousand dollars' worth of stealing was being done by their employees, and it was our duty to ascertain who the employees were and to ferret them out.

Q. During the course of this investigation, approximately how many employees were questioned, if you recall?

A. Which investigation?

Q. The 17th Avenue yard.

A. The one in the case now?

381 Q. Yes.

A. Oh, I would say approximately a dozen men.

Q. Did you have occasion to—I will ask you this. Prior to the questioning of the four witnesses who have testified in behalf of the Government here, Sturniolo, Pries, Purnell and Robinson, did you do anything in connection with the investigation with reference to contacting any law enforcing agency in Miami or Dade County?

A. Yes, sir.

Q. What was it?

A. I saw the extent of this stealing was very great. I saw there was several thousand dollars, and it was an investigation of great scope, and I expected it involved black market operations. At that time it was very difficult to get building materials. I considered the investigation to be too large for me to handle by myself, and I went to the Dade County Solicitor's office in the court house, and I requested some assistance in that office, and I told him the case and requested some assistance.

Q. As a result of your contact with the County Solicitor's office and your request, what was done?

A. The County Solicitor's office called in the Miami Police Department. They had a discussion, I
382 understand, and as a result of that discussion, a police officer was assigned with us to conduct this investigation.

Q. What police officer was that?

A. Mr. Ford.

Q. Where did you first contact Mr. Ford relative to this matter?

A. I was told by Capt. Barker that Mr. Ford had been assigned to the case and I was instructed by Capt. Barker to pick him up at his residence.

Q. Where did he live?

A. I believe it was in Coconut Grove—the address I have forgotten.

Q. Do you remember the time and the date that you picked Mr. Ford up at his home? In Coconut Grove?

A. It was late afternoon, somewhere between five and six, I believe. It has been two years, and I don't recall exactly the hour—it was on March 28th.

Q. Who was with you, if anyone?

A. Mr. Perry was with me.

Q. Where did the three of you go after Mr. Ford got into the car?

A. We proceeded to the Lindsley Lumber Com-
383 pany 17th Avenue yard.

Q. And upon your arriving there, what part of the premises did you go to and who did you see?

A. We went to the north side of the main office, and there is an advertising shack or paint shack or whatever you care to call it, located there, and that is where we went to.

Q. Describe this building.

A. It's a one-story building, I should judge 30 foot long, by approximately 12 foot wide. I don't know about the exact structure, but it is just a one-story building.

Q. Who was there when you arrived?

A. Mr. Giroux, Mr. Yuhas and I think Mr. Purnell was there.

Q. What was Mr. Giroux and Mr. Purnell doing, upon your arrival?

A. They were—let's see. They were discussing the thefts at Lindsley Lumber Company.

Q. Did Mr. Purnell make any admissions in your presence and the presence of the others that were there at that time, relative to anything that he had stolen?

A. Yes, sir. He said he had taken a few boards
384 —as he referred to it—a few boards home to complete a construction or repair job on his kitchen sink. He said of course it wasn't stealing, because Lindsley had so much, but he had taken those home to repair his sink.

Q. How long did the questioning of Purnell continue?

A. I don't believe at that time it continued at all. I believe we closed the interrogation of that man. It is two years ago. I recall asking Mr. Yuhas, on behalf of the Lindsley Lumber Company, if he wanted to press charges for these petty larceny thefts and he said it was too small to bother with. So that was all, that time.

Q. Did Purnell then leave, after you had finished questioning him?

A. Yes, sir.

Q. At any time during the questioning of Purnell, did he complain to you or any of the others about being detained or kept there?

A. No, sir.

Q. Did you or anyone in your presence beat Purnell?

A. No, sir.

385 Q. Do you recall the time or the hour that Purnell left this paint shop?

A. I would say approximately around seven o'clock. I don't recall exactly. Perhaps it is in one of my reports, but I don't recall exactly now.

Q. Did Mr. Bombaci come out there that evening?

A. Yes, sir.

Q. Do you know what time he arrived?

A. I believe if I recall correctly, he arrived at approximately the time Mr. Purnell was leaving.

Q. There has been some testimony here relative to the lighting system in that room. One witness testified that there was a bright, white light, and one testified that it was a red light, and one testified it was a suspended light from the ceiling. Do you recall the lighting system in there?

A. I haven't visited the building in two years, so I can't say exactly, but as I recall it, there was a ceiling socket—just a bulb in the ceiling.

Q. Was there any arrangement of the light made for the purpose of shining into the eyes of either of these four individuals—Sturniolo, Priest, Purnell or Robinson, for the purpose of blinding them?

386 A. No, sir.

Q. When was Priest, Mr. Priest questioned?
A. I believe that was on March 27, 1947.
Q. That was before either Ford or Bombaci had been out there?
A. Yes, sir.
Q. What time of the day was Mr. Priest questioned? When did it start?
A. I believe it was after lunch time.
Q. You heard the testimony of Mr. Priest that he was beaten by you and by others who stood behind him, did you not?
A. Yes, I have.
Q. Did you beat Mr. Priest?
A. No, sir, I did not.
Q. Did anyone else beat Mr. Priest?
A. No, sir, they did not.
Q. You heard Mr. Priest say that you called him a "son-of-a-bitch" and other similar names, did you not?
A. Yes, sir, I did.
Q. Did you call Mr. Priest those names?
A. I am afraid I did—yes, sir.
387 Q. Was there any profanity used by Mr. Priest?
A. Yes, sir. That is what caused it.
Q. How long did this questioning of Mr. Priest continue?
A. It was during that afternoon, and then we all went out and had supper, and it was after supper.
Q. Did Mr. Priest make any admissions as to his guilt?
A. Yes, sir, he did.
Q. What did he say?
A. He admitted that during his course of employment by the Lindsley Lumber Company he stole a little item every day. That he couldn't take much because it would be noticed, but when they went out to the yard to get their load to deliver, he would take maybe one extra piece at a time, and over a long period of time, he had been stealing.
Q. You heard his testimony here that he was forced to make these admissions and that when he was told the amount to say that he had stolen, that he usually added to it or doubled it. You heard his testimony as to that, did you not?
A. Yes, sir.
388 Q. Is that true or untrue?
A. It is untrue, sir.

Q. At the conclusion of the interrogation of Mr. Priest, what was done with him?

A. He was placed under arrest.

Q. And one what with?

A. He was taken to the police station and booked on suspicion of embezzlement and grand larceny.

Q. And booked where?

A. At the Miami Police Department.

Q. What hour do you recall that he was booked in there?

A. I don't exactly recall. It was in the morning hours, I believe, of the 28th.

Q. Was he finger printed at that time?

A. No, sir.

Q. Now, in connection with the Priest investigation and the interrogation, you also heard Mrs. Priest testify here to the effect that five men, including you, came out to her house at midnight and questioned her relative to the stealing on the part of Mr. Priest. You recall her testimony?

A. Yes, sir.

389 Q. Did you go to the house where Mrs. Priest was living?

A. Yes, sir.

Q. And who went with you?

A. Mr. Perry.

Q. Do you recall anyone else going with you?

A. No, sir.

Q. Did you make more than one trip there?

A. Yes, sir. We went to her house somewhere around five or six o'clock. I think it was earlier—around four o'clock, that afternoon, and she was not at home, and therefore, I had to go back. I went back in the evening.

Q. What time did you go back the second time? What was the hour, approximately?

A. Approximately nine or nine-thirty.

Q. Upon your arrival there, tell us what you did, what was said, and the length of time you remained.

A. We rapped on the door, and Mrs. Priest came to the door, and I identified myself as a detective investigating thefts at the Lindsley Lumber Company. I said, "We were questioning your husband, and we would like to ask you a few questions in connection with this investi-

390 gation, if you don't mind." And she said she would gladly cooperate, and asked us to come in.

Q. Was Mrs. Priest able to give you any help?

A. Mrs. Priest told us that Mr. Priest had not been living with her for quite some time, and she was very bitter

towards him, and she gave us no help that would help us in the investigation. However, she said if she could possibly do it, she would.

Q. Where did she say Mr. Priest was living?

A. She said she understood he was living with another woman.

Q. How long did you remain there?

A. Fifteen or twenty minutes.

Q. Mrs. Priest gave some testimony here that would indicate that you took it upon yourself to inflict some punishment on her by getting down on the floor with some kind of rope in your hand, and hitting her. Is that true or untrue?

A. That is untrue.

Q. When was Robinson and Sturniolo questioned?

A. Sturniolo was questioned on March 26, and again on March 28, and Mr. Robinson was questioned on March 28th.

391 Q. What was the result of the first questioning of Sturniolo?

A. We showed Mr. Sturniolo proof that we had that we knew he had been stealing. We had had his truck followed, and saw him go home and take several pieces of building material off and leave them at his home. He confessed to the fact that he had been stealing, and that he had some of the stolen property at his house. He took us to his home and we went there with a Lindsley Lumber Company truck, and he surrendered to us the stolen property.

Q. Was that the property that was identified here and a list that was read to him when he testified?

A. Yes, it was.

Q. And whose truck went there to bring the materials back?

A. A truck belonging to the Lindsley Lumber Company.

Q. I see. Was Sturniolo beaten at that investigation?

A. No, sir.

Q. How long did that questioning continue? That is, the first questioning of Sturniolo?

392 A. I believe it was a couple of hours.

Q. Did Sturniolo make any protest or did he evidence any resentment of being questioned?

A. Yes, he did.

Q. What did he say?

A. He used profanity. Should I quote it?

Q. Yes.

A. "You son-of-a-bitch flat foots don't want to give a guy an even break. I don't make enough living, and I have to steal"—and things of that sort. What any culprit would say upon being questioned.

Q. Did you or anyone else beat Sturniolo then or at any time?

A. No, sir.

Q. When did you next question Sturniolo?

A. On the night of March 28th.

Q. Where?

A. At the same location as the first one. In the shack on the Lindsley Lumber Company.

Q. What was the hour you started questioning these two on that occasion?

A. I believe it was around ten or eleven in the
393 evening.

Q. Where did you first contact them that evening? Sturniolo and Robinson?

A. We contacted Mr. Robinson and Mr. Sturniolo at their homes.

Q. Who was with you?

A. Mr. Perry and Mr. Ford.

Q. Which one was picked up first?

A. Mr. Robinson.

Q. And then when did you pick up Mr. Sturniolo?

A. Directly from Mr. Robinson's house, we went to Mr. Sturniolo's home.

Q. And then all of you drove to Lindsley Lumber Company?

A. That is correct.

Q. Which one was questioned first, that evening?

A. Mr. Robinson, I believe.

Q. And where was Sturniolo left, while Robinson was being questioned?

A. He was left in the car.

Q. Handcuffed?

A. Yes, sir.

394 Q. How long did you question Robinson?

A. I believe it was three or four hours.

Q. Did you or anyone in your presence beat Mr. Robinson at that time or any subsequent time or anytime prior thereto?

A. No, sir.

Q. Did Robinson make any admissions as to his participation in the stealing there at the yards?

A. Yes, sir, he did.

Q. Did he involve anyone else?

A. I believe—it has been two years. I can't exactly recall, but I believe he tried to involve the foreman of the Lindsley Lumber Company, and we later investigated it and it was cleared. He did involve several.

Q. At the conclusion of the questioning of Mr. Robinson, where was he taken?

A. He was arrested and taken to the police department.

Q. Before being taken to the police department, was Sturniolo again questioned that evening?

A. Yes, sir.

Q. Where was Robinson during the time that
395 Sturniolo was being questioned?

A. He was in the car.

Q. Whose car?

A. I don't recall whether it was my car, or Mr. Perry's car. I believe it was mine.

Q. Was he handcuffed?

A. Yes, sir.

Q. And had been placed under arrest?

A. Yes, sir.

Q. Did you or anyone in your presence at that time or any prior time or subsequently thereto, beat, bruise, or manhandle Sturniolo?

A. No, sir.

Q. Mr. Giroux was an employee of yours at that time, was he not?

A. Yes, he was.

Q. Mr. Giroux said that he was told by you and threatened by you to perjure himself before the County Solicitor of Dade County, Florida, relative to this matter. Is that true or untrue?

A. That is untrue.

Q. Did you tell, or attempt to tell Mr. Giroux
396 what his testimony was to be before the County Solicitor of Dade County?

A. No, sir, I did not.

Q. Did you ever at any time instruct Mr. Giroux to falsify his reports as an employee of yours, relative to this investigation at Lindsley Lumber Company?

A. No, sir, I did not.

Q. What part did Mr. Giroux take in this investigation, as an employee of yours?

A. He was assigned at one of the yards, as an employee working under the sham, as an employee of Lindsley Lumber Company, to observe the actions of the employees of Lindsley Lumber Company.

Q. How long had he been so engaged?

A. Offhand, I don't recall. I would say it was a month or so.

Q. And I presume he was making daily reports as to his observations there in the capacity of an alleged employee?

A. Yes, sir.

Q. And was some, or a part or a portion of the interrogation of these various employees, including Sturniolo,
397 Priest, Purnell and Robinson, as a result of the reports that Giroux had made and filed with your investigating company?

A. Yes, sir.

Q. Now, did you at any time ever have any pre-conceived plan as to the manner in which this investigation was to be continued or conducted, in trying to uncover the stealing at Lindsley Lumber Company?

A. No, sir.

Q. Who gave the orders relative to the investigation?

A. You mean who actually called us in on the case?

Q. No. Who directed the investigation?

A. I did, sir.

Q. Did you have any understanding or agreement with any person, be it Lindsley Lumber Company, Andrew J. Yuhas, Charles R. Ford, John S. Bombaci, Joseph V. Perry, or any other person relative to the manner in which this investigation was to be conducted?

A. No, sir.

Q. Did you have any understanding or agreement with them to deprive Sturniolo, Priest, Purnell or Robin-
398 son of any right that they might have under the Federal Constitution of the United States.

A. Certainly not.

Q. Getting back to the interior of the building where this interrogation or questioning was carried on, some testimony has been given as to the windows having been darkened. One witness said there was a cloth of some kind and another said they were boarded up. Do you recall the condition of the windows?

A. No, sir.

Q. Was there any re-arrangement of the structural interior of that building made by you or anyone else under your directions?

A. No, sir.

Q. Why was the questioning conducted or carried on at that particular location, if you know?

A. It was the most convenient, naturally, because they were employed at that spot, and it would have been too crowded to interrogate them in Mr. Lindsley's office, and that was the only available spot.

Q. How far is this building located from the street, approximately?

399 A. Oh, thirty-five or forty feet.

Q. These automobiles, where they were parked during the time that Sturniolo and Robinson were seated in them—how far would they be from the street?

A. They were in front of the building. They would probably be twenty or twenty-five feet from the street.

Q. Did either of those men cry out or give an alarm that you heard?

A. What do you mean?

Q. Did they holler to anyone for help or make any other similar cry?

A. No, sir.

Q. You heard the testimony of Giroux that you were the only one that did any beating, other than the fact that Priest was shoved into him and he in turn shoved Priest into Bombaci, did you not?

A. Yes, sir.

Q. Was the testimony of Giroux that you beat Priest or any of these other men true or untrue?

A. It is untrue, sir.

Q. How was Mrs. Priest dressed the night you went to her home?

400 A. I don't recall exactly—either a house dress, or house coat, or something of that sort.

Q. She said she had a gown on and she was embarrassed. Do you know anything about that?

A. No, sir. There was no reason to be embarrassed.

Q. Were you invited into the house?

A. Yes, sir.

Q. And the lights were on?

A. Yes, sir.

Q. Did you go in at her invitation?

A. Yes, sir.

Q. Do you recall about when you were employed by Lindsley Lumber Company to carry on this investigation?

A. I don't recall the exact date. I believe it was either the latter part of 1946 or the first part of 1947.

Q. Did you make daily reports to Lindsley Lumber Company as to what was being revealed through your employees or agents, so-called, that were connected with the investigation?

A. Yes, sir. We had agents in the Hollywood yard, and at Fort Lauderdale, and they would submit to me their daily reports, and I would turn them over to Mr.
401 Lindsley.

Q. How soon after this matter was it, before you left Miami?

A. I left Miami in the latter part of May. I always have reservations at the Indianapolis Automobile Races—I used to drive myself—and I left to go to the races the latter part of May. I recall telling Mr. Matthews—

Q. Who is Mr. Matthews?

A. A special agent of the Federal Bureau of Investigation.

Q. This gentleman sitting here? (Indicating)

A. Yes, sir.

Q. And what did you tell him at that time?

A. Mr. Matthews was investigating this case. He had asked me for my cooperation, which I believe Mr. Matthews will confirm, and since he was investigating it and I know the investigation procedure. I didn't know whether he wanted me to remain in Mimai or not, and so I asked Mr. Matthews if he minded if I left on my already scheduled vacation, and he said he had no objection, and I left.

Q. You had not been indicted at that time, had you?

A. No, sir.

402 Q. Where did you go from Indiana?

A. To California.

Q. And when did you first learn you had been indicted?

A. It was a couple of months ago. A friend of mine sent me a newspaper clipping that the indictment had been received. At that time I had no knowledge: I thought the case had been dropped. I immediately called the F. B. I. office in Los Angeles and contacted Mr. Kellog, and asked him if he had a warrant for my arrest or any knowledge of the indictment, and he said he hadn't. And through my attorney, I told him when the indictment came through, I would present myself to post bond. Approximately a week and a half later, the indictment did come through, and Mr.

Kellog called me and I posted bond. He is a special agent of the F. B. I. in Los Angeles.

Q. Did you make bond?

A. Yes, sir.

Q. Waived extradition?

A. Yes, sir.

Q. Came back here freely and voluntarily?

A. Yes, sir.

403 Q. Were you in the service?

A. Yes, sir, I was.

Q. How long were you in the service?

A. I served three and a half years in the regular Army.

Q. And what rank did you enjoy when you were discharged?

A. I was a Staff Sgt.

Q. What kind of discharge were you given?

A. A medical discharge.

Q. Approximately what date?

A. That was in December of 1943.

Q. Did you tell me the rank you had?

A. Staff Sgt.

Q. What were your duties while you were in the service?

A. Being a regular Army man, I had various duties. As we mobilized and the draftees came in, I shifted from one branch to another, training these draftees. I was chiefly a military police sergeant, and also a platoon sergeant in the infantry.

Q. All of your service was here in the States?

404 A. Yes, sir.

The Court: Gentlemen, I think I will recess now for lunch. Adjourn court until 2 o'clock.

(Whereupon, at 12:30, court was adjourned until 2 o'clock, p. m.)

405 Afternoon Session

(Court reconvened for the trial of this case at 2 o'clock, p. m.)

Jay G. Williams, resumed the stand and testified further as follows:

Direct Examination—cont.

By Mr. Pruitt:

Q. What is your address in Los Angeles?

A. 334 E. 62nd Street.

Q. What kind of business or occupation are you in?

A. I am director of the Continental Bureau of Investigation, a branch office of this Miami office here.

Q. The same kind of work you were doing while you were here?

A. Yes, sir.

Q. Were you issued a police card by the Police Department of the City of Miami? I mean, of Los Angeles?

A. No, sir. I was issued a gun permit. It is not the practice in Los Angeles to issue police cards.

Q. And I presume you stood some kind of examination, for that?

A. I was investigated by the State of Florida, and
406 had to stand a lengthy investigation of my past, etc.

Mr. PRUITT: That is all.

Direct Examination.

By Mr. CUSHMAN:

Q. Mr. Williams, tell the Court and jury whether Charles R. Ford was present on the premises of the Lindsley Lumber Company yards on the 26th of March, 1947, at the time Sturniolo was questioned?

A. No, sir, he was not.

Q. Tell the Court and jury whether Mr. Bombaci was there or not?

A. No, sir, he was not.

Q. On the 27th of March, 1947, I understand from the testimony that Charles—that Henry W. Priest was questioned. Was that correct?

A. Yes, sir.

Q. Tell me, please sir, whether at that time Charles R. Ford was present or not ?

A. No, sir, he was not.

Q. Tell me whether John Bombaci was present?

A. No, sir, he was not.

Q. You told us a little while ago that sometime
407 during the late afternoon of March 28, 1947, you went to the home of Charles R. Ford, pursuant to arrangements that had been made with Capt. of Detectives Barker, is that right?

A. Yes, sir.

Q. Before that hour and before you got to the house, had you ever discussed with Charles Ford any investigation which was in progress at the Lindsley Lumber yards?

A. No, sir.

Q. So far as you are aware, did Charles R. Ford know anything about any such investigation as that?

A. No, sir.

Mr. CUSHMAN: No further questions.

Cross Examination.

By Mr. BOTTS:

Q. When did you start this business known as the Continental Detective Agency here in Miami?

A. I believe it was the summer of 1944. I am not sure, but I believe it was.

Q. At least during the time when Mr. Giroux was one of your investigators—let me ask you this, if you habitually carried a great, big holster gun?

408 A. No, sir, I did not.

Q. Mr. Williams, I will ask you if it was your practice during the period when Mr. Giroux was in your employee at least, that you required your employees to address you as "Chief"?

A. No, sir, it wasn't.

Q. I will ask you if it wasn't your practice when they entered the room where you were, you required them to come in, stand at attention, and salute?

A. Certainly not, sir.

Q. I will ask you further if it was not your practice after they had come in and saluted, that you would then give them an order or command, "At ease", and then permit them to stand other than at attention?

A. That is untrue, sir. I left that in the Army.

Q. Isn't it true that you had a practice, at least when Mr. Giroux was present, of pacing up and down in front of him in the office with that gun in a shoulder holster, and then sometimes you would draw the gun and say in effect, "How do you like that?", showing how adept you were with the gun?

Mr. CUSHMAN: If your Honor please, I object
409 to this line of interrogation, upon the ground that it is immaterial and irrelevant to the matters now before the Court, and if it has for its purpose some attempt to make the witness look either ridiculous, or arouse prejudice, I submit that it is not proper and should not be permitted and I suggest that the matter being immaterial and not within any issue in the indictment, it is not subject to impeachment by the Government, and therefore it is a matter for the purpose of making innuendo.

The Court: As to the objection at this time, I am going to overrule it. You may proceed.

By Mr. Botts:

Q. Answer the question.

A. Will you read the question, please?

(Question read by reporter.)

A. Mr. Giroux and Mr. Bombaci—

Q. Would you mind answering the question and then making any explanation you desire. I thought you could answer whether it was untrue or true.

A. In the manner in which you asked me, it was untrue, sir.

Q. You can give your explanation now.

410 A. Mr. Giroux and Mr. Bombaci came to me through the Veterans' Administration. They were to learn to be a law enforcement agent, a detective. The only idea of drawing a gun was in classes in which I trained these men. But as far as pacing the floor, I do not recall any such manner.

Q. Isn't it true that some time ago you made statements calculated to impress—I can't repeat the exact words—calculated to impress these employees as to what a bad man you were?

A. No, sir.

Q. Didn't you at one time, or did you at one time explain to Mr. Giroux the plans that you had for arranging your home with a wall around it and a peep hole, so no one could get in without your orders?

A. No, sir.

Q. And did you at one time say it would make Al Capone's place look cheap, or words to that effect?

A. No, sir.

Q. That didn't take place?

A. No, sir.

Q. Who employed you to make this investigation?

411 Which one of the members of the organization known as Lindsley Lumber Company, and now appearing as Dania Supply Company?

A. Mr. Lindsley, the gentleman over there. (Indicating.)

Q. Within your knowledge, is there some member of that group known as Mr. "Rock" Lindsley? Did you ever hear of such a person?

A. No, sir.

Q. You don't know of any such person?

A. No, sir.

Q. I believe this gentleman's name was given as "R", and you don't know him under the appellation of Mr. "Rock" Lindsley?

A. No, sir.

Q. And you heard no member of that group with which he is said to be associated who was known as Mr. "Rock" Lindsley?

A. No, sir.

Q. Did you, in the presence of Mr. Giroux, call up out there and talk to someone, and state to Mr. Giroux that it was Mr. Rock Lindsley you were talking to?

412 A. No, sir.

Q. Did you ever talk to any other of the men constituting the Dania Supply Company, as it now seems the technical name should be; did you ever talk to anyone except Mr. Lindsley, the gentleman who sits in the court room with the green colored coat, to the left? (Indicating.)

A. When you say talk, what do you mean?

Q. Did you talk to any other person with the name of Lindsley?

A. No, sir. I dealt with Mr. Lindsley.

Q. And if there any other members of the Lindsley family in connection with that, you never talked to them or had dealings with them?

A. No, sir.

Q. Only with this gentleman here? (Indicating.)

A. That is right.

Q. And what directions did he give you with reference to Mr. Yuhas?

A. He never gave me any directions, sir.

Q. Did Mr. Yuhas act under your directions or instructions at any time?

A. No, sir.

413 Q. How did Mr. Yuhas happen to be present, if you know, when these various persons were being questioned?

A. I had requested for Mr. Lindsley to have a company representative there to identify any stolen goods they might have brought in to identify employees.

Q. Was Mr. Yuhas the representative the representative that was designated and sent there for that purpose?

A. Yes, sir.

Q. Do you remember whether or not when Mr. Purnell

was escorted into the building that Mr. Yuhas came in with him or immediately behind him?

A. I don't recall, it being two years ago.

Q. In other words, your memory is not clear on that. You heard Mr. Purnell state, did you not, that he went in and Mr. Yuhas came in right behind him?

A. Yes, sir.

Q. You are not prepared to make any assertion one way or the other, as to the correctness of that assertion?

A. No, sir.

Q. I don't recall whether you or whether some of the others who have preceded you have stated the length
414 of time that these various men were in the paint shop, so I will ask you—how long was Mr. Purnell in there?

A. As I recall, a couple of hours.

Q. Just what was the subject of discussion for that substantial period of time?

A. The thefts and stealing that were going on at the Lindsley Lumber Company.

Q. Mr. Purnell denied that stealing from that company from the start, or any participation in it, didn't he?

A. At the beginning, he did—yes, sir.

Q. And did he ever confess to any part in that organized stealing which was the subject of your investigation?

A. Yes, sir.

Q. And what part did he say he had in it?

A. He said he took a few pieces of board home or lumber, to repair a sink.

Q. I referred to the supposed organized stealing. Would the taking of a single board home be part of an organized stealing?

A. It was more than a single board.

415 Q. I thought you said a board to repair a sink?

A. Several boards, sir.

Q. Did he, according to your statement, confess to any participation with anyone else?

A. No, sir.

Q. Then he didn't confess that he was a part of any organized stealing, did he?

A. He confessed to stealing, but not organized stealing.

Q. How long did it take you to extract from him the assertion or the confession that he had taken two or three pieces of board home?

A. When we confronted him with Mr. Hatfield's statement, about ten minutes.

Q. During what part of the interview did he confess to the taking of those two or three boards?

A. I believe it was the first—

Q. Early in the proceeding?

A. Yes, sir.

Q. What were you trying to do to him during the balance of that two hours, if he did that in the first ten minutes?

416 A. I asked him if he knew of anyone else in the company stealing.

Q. Did that take an hour and fifty minutes?

A. Yes, sir.

Q. You asked him that repeatedly?

A. I asked him many, many questions.

Q. Were you somewhat vehement in your questioning?

Mr. PRUITT: I object—that calls for a conclusion.

The COURT: Overrule the objection. We are on cross examination.

By Mr. BOTTS:

Q. What education have you had, sir?

A. General school education.

Q. Do you know what the word "vehement" means?

A. No, sir, I don't.

Q. It means vigorous, forceful, and insistent. That would sort of explain the word "vehement." I will ask you to answer the question, if you can.

A. No, sir.

Q. You were kind to him all the time, I take it?

A. No, sir.

417 Q. What was your attitude?

A. My attitude was that of an investigator questioning a suspect.

Q. Which one was it you called a "son-of-a-bitch"?

A. I believe that was Mr. Priest.

Q. Did you use that same endearing term towards Mr. Robinson?

Mr. PRUITT: I object to the manner in which the question was asked.

The COURT: I sustain the objection.

By Mr. BOTTS:

Q. We will cut out the word "endearing". Did you use the same term towards Mr. Robinson?

A. That, and several others, sir.

Q. Would you mind repeating the other appellations which you applied to Mr. Robinson?

A. There was general cussing going on on both sides.

Q. I would like very much to hear it. We aren't so delicate we can't understand what those terms mean.

A. "Son-of-a-bitch"—"dirty bastard"—"dirty bastard flat foot", that was me—hell, and damn.

418 Q. Who used that last term?

Mr. Pruitt: If Your Honor please, I submit the witness shouldn't be given but one question at a time.

The Court: He answered that question.

By Mr. Botts:

Q. Was it by Robinson?

A. Yes, sir.

Q. Go ahead.

A. That covers it.

Q. Did you call him a liar?

A. I don't recall.

Q. Do you mean to say you don't remember or that you did not?

A. I don't remember.

Q. You didn't by any chance refer to him as a "bastard," did you?

A. I probably did—yes, sir.

Q. You were considerably more vigorous of physique at that time than you are at present, were you not?

A. What do you mean? —

Q. Heavier?

419 A. I have lost fifteen or twenty pounds.

Q. What do you weigh now?

A. I believe it is 185, sir.

Q. And you weighed then in the neighborhood of 200?

A. Yes, sir.

Q. And you had, accompanying you on that occasion, you had Mr. Perry, did you not?

A. Which occasion is this?

Q. On some of those occasions when these terms were exchanged by you and the witnesses?

A. Yes, sir.

Q. And Mr. Ford was present at least on some occasions?

A. Yes, sir.

Q. And Mr. Yuhas was there?

A. Yes, sir.

Q. And Mr. Bombaci was there on some of the occasions?

A. Yes, sir.

Q. And you had guns there, did you not? Pistols, or something of that kind?

420 A. Mr. Ford has said he had a gun.

Q. Didn't you instruct Mr. Giroux to take some firearms out there? Pistols, or something of that kind?

A. No, sir, I did not.

Q. You didn't have your big, old Western type gun on you at that time?

A. I believe at that time I was carrying a 38, police special.

Q. You had that with you?

A. Yes, sir.

Q. And you and your cohorts somewhat out-numbered the witnesses, did you not?

A. Would you explain the word "cohorts"?

Q. I won't, because I am sure you understand it.

A. I don't understand the word.

Q. Your supporters, your associates.

A. Could I have the question read?

(Question read by reporter.)

A. Yes, sir.

Q. With that numerical situation presented, will you explain what lead these single and unaccompanied individuals to apply the insulting terms to you that you

421 have referred to?

A. Thieves never do like to be caught, and it was natural that they would use those terms to the men who caught them stealing.

Q. And that is your explanation?

A. Yes, sir.

Q. And do I understand you to say or imply either way, that the terms you used to these witnesses were in retaliation for similar words used to you in the first place, is that right?

A. It was used in the discussion—I wouldn't say retaliation.

Q. Who first cussed you for a "son-of-a-bitch"?

A. I believe it was Mr. Robinson, if you are talking about that time.

Q. And then you cussed him for a "son-of-a-bitch"?

A. Yes, sir.

Q. The idea, I suppose, was regenerated by his statement to you?

A. Yes, sir.

Q. Who first called who a "bastard"?

A. I don't know all those details. After two years,
422 I cannot quote any conversation word for word.

Q. And who first called who a liar?

A. I just said after two years I could not remember the conversation, as to what time someone said this. I had no stop watch, sir.

Q. I will ask you at this time to give me your best recollection in those respects.

A. It is an impossibility to give that recollection. I remember the general conversation, but not as to who did what and why at such and such a time, sir.

Q. You have stated also that you called Mr. Priest by that same term. I refer to the use of the word "son-of-a-bitch."

A. Yes, sir.

Q. He is a rather elderly gentleman, is he not?

A. Yes, sir.

Q. Did he initiate the interchange of those terms, applying each to the other?

A. I can help you on this one.

Q. I wish you would.

A. Very well. He threatened to call the Ku Klux Klan on me, if we didn't immediately cease our investi-
423 gations. The Ku Klux Klan was going to burn our houses down, or some ridiculous thing like that. That is what brought it about.

Q. It is ridiculous, isn't it?

A. It is, yes, sir.

Q. Do I understand you to say that being incensed by this suggestion, you applied the term to which we have had reference to?

A. Yes, sir.

Q. In the first place, you first called him a "son-of-a-bitch," did you not?

A. After he said he was going to call the Ku Klux Klan.

Q. Just in what connection did you use that term?

A. In reference to the statement that we were going to be burned out of our homes.

Q. Would you mind, if you can, repeating exactly what you did say to this elderly, bespectacled gentleman?

Mr. PRUITT: I object to the phrasing of the question.

The COURT: It is a little, unduly descriptive.

By Mr. BOTTS:

424 Q. Mr. Priest is the person to whom I refer.

A. Read the question.

(Question read by reporter.)

A. No, I can't recall the exact conversation.
Q. How did you happen to curse him?
A. I have already stated that.
Q. And just what did you say to him? Did you say what you were going to do to him, using the term I have referred to?
A. No, sir.
Q. Just why and how did you use that term?
A. I have already stated, sir, because he said he was going to burn us out of our homes.
Q. Did you use the same term to Mr. Purnell?
A. No, sir.
Q. You did not?
A. Not that I recall.
Q. And did you use the same term to Mr. Sturniolo?
A. You mean during the entire investigation?
Q. Yes. I would like you to say, one way or the other.
425 A. I don't recall. Perhaps I did, and perhaps I did not. But I imagine I did.
Q. You have stated that you questioned Mr. Purnell for over a period of about two hours. At what period of that questioning did your questioning and the language used with Mr. Purnell become heated?
A. I don't recall that it did become heated.
Q. Your talks with him were in a quiet, ordinary conversational tone?
A. These were not conversational talks, sir. These were investigations. We never had conversational talks.
Q. Was it in a loud tone of voice?
A. It was in about the tone of voice I am talking now, sir.
Q. Did Mr. Purnell become angry or at least show any evidence of anger during that conversation?
A. Yes, sir.
Q. What occasioned that?
A. He didn't like being caught stealing, sir.
Q. You had caught him stealing?
A. Mr. Hatfield had testified to the fact that he had seen him stealing, and Mr. Purnell finally confessed
426 that that was the truth.
Q. After two hours, he finally confessed?
A. It was in the first ten minutes of the conversation.
Q. Do you care to give us any explanation as to the manner or the subject of conversation during the other hour and fifty minutes that you say he was there?
A. I have already given it, sir.

Q. How long did you have Sturniolo in there the first time?
A. Two or three hours—I don't remember exactly.
Q. And how many hours the second time?
A. Perhaps four.
Q. Perhaps, then, seven hours all told with Sturniolo on the two different occasions?
A. Yes, sir.
Q. And how long did you have Priest in there?
A. You mean at one complete time or all told?
Q. Well, it was all on the same day, was it not?
A. Yes, sir.
Q. And what time did you take him in the first
427 time you questioned him?
A. I didn't take him in, sir.
Q. Who did?
A. No one.
Q. He came in accompanied by whom?
A. I don't recall.
Q. How long did that questioning period require, or how long did you use in questioning that first time?
A. I believe it was two hours.
Q. And then what was done with him?
A. Nothing was done with him. We asked him to wait outside.
Q. Was he shackled to the steering wheel of the car during that period?
A. No, sir.
Q. Just sitting out there?
A. Yes, sir.
Q. What time did you say the first questioning began?
A. A little after noon.
Q. And when was it concluded?
A. It was concluded when we put him under arrest
428 for embezzlement and grand larceny.
Q. And how much of that period was not covered by your questioning of Mr. Priest in the shack?
A. How long was not covered?
Q. Yes. You said you took him in there about noon.
A. I didn't say I took him in there about noon. He came in there about noon.
Q. He was in there about noon?
A. Yes, sir.
Q. And he was questioned for how long?
A. I think I just said two hours.
Q. Then that would be 2:30 or 3 o'clock?

A. Yes, sir.
Q. What was done with him then?
A. He was asked to wait outside.
Q. And how long did he wait there before you again saw him in the shack? However he got in there.
A. Offhand, I would say an hour or two.
Q. Did he stay in there continually until he was arrested?
A. No, sir.
429 Q. How long did he stay in there that second time?
A. Until about dinner time. We all went and got dinner.
Q. Did he get any dinner?
A. Yes, sir.
Q. That would be around, say, six o'clock?
A. Roughly.
Q. What was done with him after you had some food? What was done with Mr. Priest?
A. The interrogation was continued.
Q. After dinner the interrogation was continued?
A. Yes, sir.
Q. So there was two periods of interrogation during the afternoon? The intermission for food, and then the interrogation was resumed, is that right?
A. As I recall it, yes, sir.
Q. And how long did that third period of interrogation continue?
A. I went to his house around nine o'clock, and we came back from dinner at seven. We will say it was two hours.
Q. Did you take him with you when you went to
430 his house?
A. No, sir.
Q. Who stayed with him at the shack?
A. I believe it was Mr. Giroux.
Q. Was he handcuffed at that time or any time during this questioning?
A. No, sir.
Q. How long were you gone to go to Mr. Priest's house?
A. I don't know exactly. Perhaps it was two hours. I don't recall.
Q. And then was Mr. Priest brought in for a fourth period of questioning?
A. No, sir.
Q. The record shows that he was arrested at four o'clock a. m. What was done with him from approximately nine o'clock when you say you went out to his house, until four a. m., the next morning?

A. He was waiting at the shack.
Q. And what were you doing?
A. I had a stack of investigation reports about a foot high, and reports from the other yards I had to go
431 through.
Q. And where was Mr. Priest sitting during the time when you were going over these reports?
A. Part of the time he would come in the shack, and part of the time he went out of the shack.
Q. Just went wherever he pleased?
A. Yes, sir.
Q. He could have gone home if he had wanted to?
A. We asked him not to go home—no, sir.
Q. And during that period, which would be from nine until after three, or a period of six hours, he just wandered around there at his own, free will, and you didn't talk to him at all?
A. Oh, no. I didn't say I didn't talk to him at all. You implied was he under intense questioning and he was not.
Q. Was he under questioning at all—intense or otherwise?
A. He was under questioning, yes, sir.
Q. Just mild, kind questioning?
A. There was no reason to be kind to these men. They were crooks, and I was investigating their thefts.
432 I was very lenient with them—otherwise they would be in prison today, sir.
Q. Do you know that no charges were ever preferred against Mr. Priest?
A. Yes, sir.
Q. And so your opinion that he was guilty was hardly corroborated by the opinion of the officers, is that correct?
A. What officers, sir?
Q. The prosecuting officers. Those who are under oath to do their duty.
A. That is right, sir.
Q. Did Mr. Priest ultimately—to use your expression—confess?
A. Ultimately confess? How do you mean that, sir?
Q. You just put your own interpretation on it. The words are plain.
A. I have asked you a question, sir. I would like for you to explain the question, so I can answer it to the best of my ability. Will you read the question?
(Question read by reporter.)
A. Yes.

433 Q. During what portion of these several periods of interrogation did he confess?

A. I believe it was in late afternoon. Just before we went to his house.

Q. You have stated that you went to his house about nine o'clock. Do you mean at night, or in the late afternoon?

A. I have stated I went to his house twice. Once in the afternoon, and Mrs. Priest was not at home, and I returned there in the evening.

Q. It was about the time you went to his house the first time that he confessed?

A. Yes, sir.

Q. And to what did he confess?

A. To stealing building materials and supplies.

Q. And how did he explain he accomplished these depredations?

A. He would add a little more on to his truck than the order was, or he would deliver a little short, and whatever was left, he would just appropriate.

Q. Mr. Robinson was the third one to be interrogated, is that right?

434 A. I believe—

Q. We will start with Sturniolo. Then Priest, then Purnell, then Robinson, then Sturniolo.

A. That would make Robinson fourth, wouldn't it?

Q. Yes, sir. It would be fourth.

A. Yes, sir.

Q. Have you observed Government's Exhibits 2, 3, 4 and 5, being pictures of Mr. Robinson?

A. Have I observed them?

Q. Yes, sir.

A. No, sir.

Q. Would you kindly do so?

(Witness examined pictures.)

Q. Do you observe some discolored portions of his person as appearing in those photographs?

A. Yes, sir.

Q. From your long experience as an investigator, would you be able to form any conclusion as to what caused those discolored conditions on his body?

A. Well, sir, it would be an impossibility. It could be numerous causes.

Q. Would one of them be bruises?

435 A. If it was anything in the skin, it would be a bruise—yes, sir.

Q. And do you observe a condition on the right, rear portion of Mr. Sturniolo's upper arm?

A. Is this Mr. Sturniolo?

Q. Yes. Government's Exhibit 7.

A. It is Mr. Sturniolo?

Q. It is said to be.

A. Thank you, sir.

Q. Do you observe what appears to be a bruise or wound there?

A. It appears to be a mark on the skin. It could be a smudge of dirt, it could be a bruise, or it could be a wound. I wouldn't testify what it was.

Q. You wouldn't have any idea, of course?

A. No, sir.

Q. Mr. Williams, during the time when these men who have appeared here were in your control or were out there in that shack, I will ask you if anything transpired that could possibly have caused a bruised or wounded condition, such as appears to be a possible explanation of the appearance shown by these photographs?

436 A. No, sir.

Q. Did Mr. Priest, when he was in there being questioned for these several hours, was he seated or standing up?

A. Both, sir.

Q. What was the occasion of him being standing up?

A. I guess he was nervous because he was caught stealing. He got up and started pacing the floor.

Q. Did you require him to stand with his arms behind him and look into that light?

A. Certainly not.

Q. Did you take his spectacles away from him during that time?

A. No, sir.

Q. Was he wearing his spectacles all the time when he was in there?

A. Yes, sir.

Q. Was he at any time on the floor?

A. No, sir.

Q. He was sitting down or standing up at all times.

437 A. Yes, sir—a normal position.

Q. And does the same apply to Mr. Robinson and the other persons who were examined?

A. Yes, sir.

Q. Mr. Williams, you have heard the testimony here with reference to each of these persons, who claim they were

mistreated, that immediately after they had been subjected to your interrogations, their bodies were covered with welts, bruises and contusions, did you not?

A. Yes, sir.

Q. You have heard the evidence that when Priest was lodged in jail, that when examined there, his body was covered with wounds and bruises, did you not?

A. Yes, sir.

Q. And you heard the same with reference to Robinson?

A. Yes, sir.

Q. Are you able to offer any explanation as to the apparently unquestioned fact of the existence of a bruised condition of the bodies of these men when they were in jail?

Mr. PRUITT: I object.

438 The COURT: I sustain the objection. The use of the phrase "unquestioned fact" is improper.

By Mr. BOTTS:

Q. Go ahead.

A. Any explanation?

Q. Yes, sir.

A. Could I have the question read?

(Question read by reporter.)

A. Meaning how did they get there? How did the bruises get there?

Q. Yes.

A. No, sir.

Q. Were the bodies of these men wounded or bruised in any way when they left the paint shack?

A. No, sir.

Q. Were all of them taken to the police station and booked, except Purnell?

A. Yes, sir.

Q. And when they left the paint shack, so far as you know, they were in good physical condition?

A. Yes, sir.

Q. The same applies to Purnell, though he was not
439 taken to the police station? He was still in good physical condition?

A. That is correct.

Mr. BOTTS: That is all.

Mr. PRUITT: No questions.

The COURT: You are excused.

(Witness excused.)

440 JOSEPH V. PERRY was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. BOARDMAN:

Q. Will you please state your name?

A. Joseph Perry.

Q. Where do you live?

A. 899 N. W. 17th Avenue.

Q. Is that in Miami, Dade County, Florida?

A. Yes, it is.

Q. And how long have you been a resident of Miami, Florida?

A. Since 1945, when I was discharged from the United States Navy.

Q. How old are you?

A. Thirty years old.

Q. Are you a married man?

A. Yes, sir.

Q. Do you have any children?

A. Yes, sir.

Q. How long did you serve as a member of the United States Navy?

A. Six years in active duty—two years inactive. I received an honorable medical discharge.

441 Q. Upon your discharge, did you receive any medical disability you had?

A. I was classed 60 per cent disability.

Q. What was the nature of your duties while a member of the United States Navy?

A. I was a machinist's mate, first class.

Q. Did you have any other duties during that period?

A. I put in approximately two years as a shore patrol with the U. S. Navy.

Q. Upon your discharge from the Navy in the year 1945, what occupation did you choose?

A. I was a deputy sheriff of Dade County.

Q. For how long a period?

A. Approximately one year.

Q. And what was the nature of your duties while so employed?

A. I was a uniformed deputy sheriff of the Dade County road patrol.

Q. After the termination of that employment, did you then enter any other employment?

A. I was employed by the Continental Detective Bureau.

Q. Were you so employed on or about March 26, 1947?

A. I was.

Q. In what capacity?

A. As a private investigator for the Bureau.

442 Q. Continental Detective Bureau?

A. That is right.

Q. By whom were you employed?

A. Jay G. Williams.

Q. Were you paid for your services?

A. I was paid on a weekly basis, sir.

Q. A straight weekly salary, I take it?

A. That is right, sir.

Q. Did you receive any additional salary if any property were recovered, or arrests made or convictions obtained?

A. I did not, sir.

Q. You got a straight salary, then?

A. That is true.

Q. On or about March 26, 1947, while employed at the Continental Detective Bureau, on what case were you assigned on or about March 26?

A. I was assigned to the investigation at the Lindsley Lumber Company yard on N. W. 17th Avenue.

Q. Who gave you your orders and instructions?

A. Jay G. Williams, sir.

Q. Were you told to assist in an investigation then taking place at the Lindsley Lumber yard?

A. I was, sir.

Q. Were you told of the nature of that investigation?

443 A. Not previously, sir.

Q. Did you ever learn what your duties were in assisting in that investigation?

A. It was to assist in the investigation.

Q. The investigation of what?

A. To investigate the thefts which had been going on at the various yards.

Q. Of the Lindsley Lumber Company?

A. The Lindsley Lumber Company yards.

Q. How long, Mr. Perry, did that investigation take place, from March 26, 1947?

A. From March 26, to March 28, 1947.

Q. During that period of time, did you have any conversation with reference to your duties with any official of the Lindsley Lumber Company or Mr. Yuhas?

A. I did not, sir.

Q. It has been testified, Mr. Perry, that on one occasion you accompanied Mr. Williams to Mr. Ford's home and on another occasion you accompanied Mr. Williams to Mrs. Priest's home.

A. That is true, sir.

Q. And on still another occasion, that you accompanied Mr. Williams to Mr. Robinson's home, is that correct?

A. That is true, sir.

Q. Was that during this investigation?

444 A. That is right.

Q. Were you acting in this scope as an employee of the Continental Detective Bureau?

A. I was, sir.

Q. Did you receive your orders and instructions to be where you were at those times?

A. I did, sir.

Q. Mr. Perry, it has been testified that during the period of March 26th to March 28th, 1947, during the questioning of the prosecuting witnesses, that have previously testified, that you at some of those times were present.

A. I was, sir, yes.

Q. At any of those times during the period of time in question, did you beat, strike, batter, or bruise any of the complaining witnesses—Priest, Sturniolo, Purnell and Robinson?

A. I did not, sir.

Q. Mr. Perry, at any time during the period of time in question, did you have an agreement or a conversation with Mr. Ford, Mr. Williams, Mr. Yuhas, Mr. Bombaci or any member of the Lindsley Lumber Company to effect a conspiracy to deprive any of the prosecuting witnesses of any of their civil rights under the Federal Constitution?

A. I did not, sir.

Mr. BOARDMAN: That is all.

445 Further Direct Examination.

By Mr. CUSHMAN:

Q. Do you remember who was present on March 26, 1947, at the time some part of the questioning went on?

A. Yes, sir.

Q. Tell me who was questioned on March 26, 1947.

A. Sturniolo.

Q. Where?

A. At the shed at 17th Avenue yard, Lindsley Lumber Company.

Q. Who was present at that time?

A. Jay G. Williams, myself, Henry Giroux, Mr. Yuhas, and myself.

Q. How about Bombaci?

A. Bombaci wasn't there.

Q. How about Ford?

A. Ford wasn't there.

Q. On March 26, 1947, had you spoken to Mr. Ford at all or comunicated with him in any way in connection with the investigation that was going on at the Lindsley Lumber Company yard?

A. I had not.

Q. Before that date, had Mr. Ford had anything to do with that investigation, directly or indirectly?

A. Not to my knowledge, sir.

446 Q. Who was questioned on March 27, 1947, the next day?

A. Henry Priest.

Q. Do you remember who was present on that occasion?

A. Yes, sir.

Q. Tell me.

A. Jay G. Williams, Henry Giroux, myself, Mr. Yuhas, and Mr. Priest.

Q. Was Bombaci there?

A. No, sir.

Q. Was Ford there?

A. No, sir.

Q. On March 28, 1947, according to the testimony that has been given, Mr. Purnell was questioned, is that correct?

A. That is correct, sir.

Q. Were you out at the premises of the Lindsley Lumber Company when Mr. Purnell was called over to the paint shack?

A. I wasn't, sir.

Q. Where were you?

A. Mr. Williams and myself went down to the home of Sgt. Ford to pick him up to come up and aid us in the investigation.

Q. About what time was that?

A. Approximately five-fifteen or five-thirty.

447 Q. Do I understand from your testimony that before you left the Lindsley Lumber yard to go and get Ford down at his house, that you had not seen Purnell that day?

A. That is right.

Q. Had not questioned him?

A. No, sir.

Q. Did you or Williams on March 28th or before that time ever go to the county solicitor's office?

A. Yes, sir.

Q. When did you go there?

A. I believe it was in the morning on March 28th.

Q. Who went down there?

A. Mr. Williams and myself.

Q. What was the purpose of going?

A. To ask for assistance in the investigation.

Q. At the time you went down to the office of the county solicitor on the morning of March 28th to ask for assistance, had you seen Ford?

A. I had not, sir.

Q. Had you at that time had anything to do with any investigation that was going on?

A. Not to my knowledge, sir.

Q. After you had gone to Ford's house on the afternoon of March 28, 1947, did you go directly from Ford's house back to the Lindsley Lumber yard?

A. We did, sir.

448 Q. When you got there, tell me please sir, who was at the paint shack?

A. Giroux and Purnell, at the time.

Q. Was Bombaci there?

A. No, sir.

Q. Mr. Yuhas?

A. Not at that time, sir.

Q. I will ask you about going to the home of Mrs. Priest. Do you recall that?

A. I do, sir.

Q. When was that?

A. We went to her home earlier in the evening.

Q. What evening, please sir?

A. On March 27, it must have been probably six or six-thirty, and there was no one home, and about nine p. m. we returned to the house and Mr. Williams knocked at the door and Mrs. Priest came to the door. He informed her that we had been questioning her husband with reference to some thefts at the lumber yard and he would like to talk to her in reference to this. She asked us to come in and we sat and questioned her as to the activities of her husband. She told us he had not been living with her for quite some time, that he was living with another woman. After ques-

tioning her about ten minutes, we were not able to get any information to aid us in our investigation, and we left.

449 Q. Who was there at the time?

A. Williams and myself.

Q. Mrs. Priest has testified that Mr. Ford was there. Is that right, or not?

A. He was not.

Q. Do you recall how she was dressed?

A. It appears that she had a house dress or something of that nature—a house dress or house coat on.

Mr. CUSHMAN: That is all.

Further Direct Examination.

By Mr. PRUITT:

Q. Mr. Perry, were you ever summoned to appear as a witness in a crimnial prosecution against Mr. Sturniolo in the Criminal Court of Record of Dade County, Florida?

A. I was.

Q. Was that charge a result of this investigation?

A. It was, sir.

Q. What happened to that case, if you recall?

A. I appeared as a witness in this case, and before it was tried, it was dismissed.

Q. How many times had you been summoned there as a witness?

A. I believe it was twice.

Q. Did you talk with the solicitor relative to this matter?

A. I did, sir.

450 Q. Do you know the name of the solicitor to whom you talked; whom you discussed the case with?

A. I believe it was Aroney, or something very similar to that.

Mr. PRUITT: That is all.

Mr. BOTTS: You may come down.

(Witness excused.)

The COURT: We will take a ten minute recess.

(Recess.)

AFTER RECESS

Mr. BOTTS: I would like at this time to recall Mr. Williams for one or two questions on cross examination, if the Court please.

JAY G. WILLIAMS, was recalled as a witness, and testified further as follows:

Cross Examination.

By Mr. BOTTS:

Q. My recollection is not clear and I want to be sure if I asked you this question and you have answered it. While Purnell was in the shack, did you or anyone else curse Purnell?

A. I don't recall accurately, sir.

Q. You wouldn't be able to say?

A. No, sir, not after two years.

Q. Do you deny that the same vile terms that we
451 have referred to previously were used toward Purnell?

A. I don't deny it, sir.

Q. Is the same true with reference to Sturniolo?

A. Yes, sir.

Q. At some time during the process, you are clear that Priest, Robinson and Sturniolo were sworn to in the manner you have indicated, but you are not sure with reference to Purnell, is that correct?

A. Yes, sir.

Mr. BOTTS: That is all.

(Witness excused.)

CHARLES PRICE, was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. CUSHMAN:

Q. State your name, please sir.

A. Charles W. Price.

Q. You are the same Charles Price who has previously been called and testified as a witness for the Government?

A. Yes, sir.

Q. Mr. Price, are you connected with the police department of the City of Miami?

A. Yes, sir.

Q. In what capacity?

A. My rating is a police detective.

452 Q. Are you in charge of the personal records?

A. Yes, sir.

Q. As I understand the term, the personnel records mean the records of various members of the force, is that correct?

A. Yes, sir.

Q. Are those personnel records kept and maintained by the department as a regular part of the business of the department?

A. Yes, sir.

Q. Are the papers and documents which appear therein placed in the records?

A. Yes, sir. From the time of the employment from day today, and year to year, thereafter.

Q. To put it briefly, is that a history of the officers' service record, which they have made as officers?

A. Yes, sir.

Q. Do you have with you the personnel record of Charles R. Ford?

A. Yes, sir.

Q. Is that what you have in your hand?

Mr. CUSHMAN: We offer the personnel record in evidence and request that it be delivered to the Clerk, and that we be given an opportunity to substitute a copy of the

453 documents contained therein.

Mr. BOTTS: I am going to object on the ground that it encumbers the record, and I am going to suggest that if there are any parts that you wish to introduce, it be read into the record.

Mr. CUSHMAN: I am willing to accept that.

Mr. BOTTS: I reserve the objection that if there is anything you offer that is deemed to be immaterial, I am going to object to it.

The COURT: Have you seen the record?

Mr. BOTTS: No, sir.

The COURT: Certainly you would be entitled to examine it. You leave it with the Clerk and it will be returned to you.

(Witness excused.)

Mr. FLOYD: We have a witness—Miss Gertrude McConnell.

GERTRUDE McCONNELL, was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. FLOYD:

Q. Would you state your full name and residence address?

A. Gertrude McConnell, 1530 N. W. 15th Street
454 Road, on Allapattah Drive.

Q. Miami, Florida?

A. Yes, sir.

Q. Did you reside at that address on or about March or April, 1947?

A. Yes. sir.

Q. Were you, in or about March or April, 1947, engaged in any building at that time at that address?

A. Yes, sir.

Q. What was the nature of that building?

A. I was building an extension on my sister's house for storage and preparing the house for future renting in case she wants to rent.

Q. Did you have occasion to order any of the building supplies used in that construction from the Lindsley Lumber Company?

A. I ordered most of it from Lindsley's.

Q. How did you place your orders?

A. I placed the order, paid cash, and it was delivered in a day or two.

Q. Was the purpose for your paying cash before delivery to receive a cash discount?

A. Yes, sir.

Q. Do you know Henry W. Priest?

A. I don't know him as a person. I know him as
455 the driver that delivered the goods.

Q. Did Mr. Priest on some of the occasions on which the orders were delivered, did Mr. Priest drive the truck?

A. Yes, sir.

Q. Were there any occasions where you had not placed an order with Lindsley Lumber Company, when Mr. Priest would come to your home with building materials?

A. Yes, sir.

Q. On how many occasions, if you can approximate it?

A. Between three and five.

Q. Three or four or five?

A. Yes.

Q. Did Mr. Priest leave any building material with you on those occasions?

A. Yes, sir.

Q. Did you pay Mr. Priest for the building material?

A. Yes, sir.

Q. In cash or by check?

A. Cash. I did all my business with Lindsley's by cash, except the first few orders I gave them.

Q. Did Mr. Priest give you any receipt of any kind on these occasions?

A. No, sir.

Q. The three, four or five occasions?

A. No, sir, I didn't ask for any.

456 Q. On the three to five occasions that Mr. Priest came to your house with building material without your having ordered the building material, were you expecting him?

A. No, sir.

Q. Would he come during the daytime?

A. Yes.

Q. Would he drive by or just appear or what?

A. Most of it was at the end of the day. He would just appear. I was doing the work myself, with a day laborer and I was working myself, and he would just come in the yard.

Q. And you did not order on those occasions any material from Lindsley Lumber Company?

A. No, sir.

Q. Can you recall what type of material Mr. Priest left with you, for which you paid cash?

A. Two by four's, and I believe sheathing, a roll of roofing, and two or three odds and ends of fancy trim and some small trimmings, as I remember.

Q. Do you remember about how much money in an overall amount that you paid Mr. Priest on these three to five occasions he visited you unsolicited?

A. Well, I—

Mr. Botts: If the Court please, I am going to object to this line of testimony on the ground that Mr. Priest is not on trial. He was not cross examined about this mat-

457 ter, and no predicate has been laid for this testimony.

Mr. Floyd: May it please the Court, Mr. Priest was very vigorously questioned by Government counsel about whether he stole any material from Lindsley Lumber

Company and in re-counting the occasion of March 27th, which Mr. Priest said was the 28th, he vigorously denied having taken any material from Lindsley Lumber Company.

The COURT: I sustain the objection. It is a collateral issue, and would tend to confuse this trial. I sustain the objection.

Mr. CUSHMAN: May I suggest that it would certainly go to the credit of Mr. Priest—

The COURT: I sustain the objection.

Mr. FLOYD: Just one more question. Miss McConnell, you are appearing here today under subpoena, are you not?

The WITNESS: Yes, sir.

Mr. BOTTS: No questions; come down.

(Witness excused.)

458 ANDREW J. YUHAS, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. STRICKLAND:

Q. State your name, please, sir.

A. Andrew J. Yuhas.

Q. Where do you live?

A. 820 N. W. 64th Street.

Q. Do you own your home at that address?

A. I do.

Q. Are you married?

A. I am.

Q. What does your family consist of?

A. My wife and two girls.

Q. How old are they?

A. One is three, and one, six.

Q. By whom are you employed?

A. By Lindsley Lumber Company.

Q. You have heard, have you not, Mr. Sturniolo testify that he was questioned on the premises of the Lindsley Lumber Company on or about the 26th day of March, 1947, have you not?

A. I have.

Q. Were you present at any time during that date that he was questioned?

A. I was.

459 Q. When was the first time you knew anything about the questioning of Mr. Sturniolo?

A. About five o'clock on the afternoon of March 26, 1947.

Q. How did you learn of the investigation? How did you learn of the investigation and questioning of Sturniolo?

A. Mr. Williams and Mr. Perry and Mr. Giroux came to the lumber yard about three o'clock in the afternoon of March 26, 1947.

Q. Go ahead.

A. Before they questioned Mr. Sturniolo, they questioned several other individuals, employees, and then about five o'clock of that same afternoon, Mr. Williams said he would like to have me ask Mr. Sturniolo to come over to the paint shop.

Q. Where was Mr. Sturniolo at the time?

A. He was at the yard, across the street from the office.

Q. That is on the east side of 17th Avenue?

A. That is correct.

Q. And the shed or paint shop is on the west side?

A. That is correct.

Q. Did you go over and inform Mr. Sturniolo that he was wanted for questioning?

A. I went over across the street and asked the yard
460 manager if he would have Mr. Sturniolo come to see me. Mr. Sturniolo did come to see me. I said, "We have some investigators across the street that would like to ask you some questions." I started across the street, and he followed me.

Q. Where did you go then?

A. To the paint shop.

Q. Did you go in the paint shop?

A. I did.

Q. How did you gain admittance to the paint shop?

A. I opened the door and went in.

Q. Was the door locked?

A. No, sir.

Q. Did you go in first?

A. Yes, sir.

Q. Did Mr. Sturniolo follow you in?

A. He did.

Q. Then what took place?

A. Mr. Williams, Mr. Giroux and Mr. Perry were inside, and Mr. Williams introduced himself to Mr. Sturniolo. Mr. Sturniolo then was requested to sit down there in about the center of the floor, which he did.

Q. Did he sit down in one of the chairs?
A. Yes, sir.
Q. Who questioned him?
A. Mr. Williams.
461 Q. What was he questioning him about?
A. About thefts.
Q. Did anyone else question him?
A. Not that I can recall.
Q. Did you ask him any questions?
A. No, sir.
Q. About what time was that, that you entered the paint shack?
A. About five o'clock.
Q. And how long did the questioning go on?
A. About five o'clock I had to leave there, because I had to go back over to the office, inasmuch as we were planning to work that night. The accounting department was planning to work that night, being the close of our fiscal accounting period. We had a lot of work to do. Before the other employees had left, we had made plans for that evening, so I left and went over to the office.
Q. What is the type of work you do out there?
A. I am the comptroller of the company.
Q. And you supervise a number of employees under you?
A. I supervise the accounting department of the entire organization.
Q. Were you present in the paint shed during all the time that Sturniolo was questioned on the 26th of March?
A. No, sir. As I said, I left and went to the office.
462 I came back later.
Q. When did Sturniolo go out of the shed for the first time after he was carried in?
A. I would say it would be about eight o'clock that evening, of the 26th of March, 1947.
Q. Did he make any confession or statements as to lumber supplies and materials that he had stolen from the company?
A. He did.
Q. Was a record made of that?
A. It was.
Q. Who made that record, or took his statement?
A. Mr. Giroux.
Q. Was that statement voluntarily given?
A. It was.

Q. Did you at any time during that period, see anyone strike Mr. Sturniolo?

A. No, sir.

Q. You heard some testimony here in regards to the various objects that were supposed to have been present. One witness testified that he was struck with a rubber hose; another, a dowel stick; another, a flat instrument with a leather seam; and another with a hunk of sash cord. Did you at any time while you were in that shack see any of those items present?

463 A. No, sir.

Q. Did you see anyone strike him?

A. No, sir.

Q. Where did he go after he left the shack at about eight o'clock?

A. At about eight o'clock, Mr. Sturniolo left the shack. By the way, in the meantime, Mr. Williams had requested that I have a truck and truck driver handy for the retrieving of materials he felt Mr. Sturniolo had stolen. So about eight o'clock, we left the paint shop and Mr. Giroux rode with Mr. Sturniolo and Mr. Williams and Mr. Perry and myself, and we drove over to Mr. Sturniolo's home.

Q. About what time did you arrive at his home?

A. About—say, about, shortly after eight, or quarter after eight. Somewhere in that vicinity.

Q. Who was at his home?

A. I don't know who was inside the house, but when we got there, I do know Mr. Sturniolo went inside the house, and then he came back out.

Q. Did he show you where the materials were that he stole from the company?

A. He did.

Q. Where were they in regards to the lot?

A. On the right side of the house, there was, I would say, a porte corchere—it looked like a porte corchere, as well as I remember, and the materials were stored in there.

464 Q. Did you have the list with you, which he had admitted stealing certain items?

A. Mr. Giroux had the list.

Q. Did you find those items at his house?

A. We did.

Q. Were they put on the truck?

A. Yes. Mr. Giroux would stand there with the pencil and the pad that contained the list of this material confessed to by Sturniolo, and he would check it off as the truck

driver named Ben Buttrey would load the truck with this material.

Q. Did the items you recovered correspond with the confession that Sturniolo had given in the paint shop?

A. It did, with a very few exceptions.

Q. Did you see Sturniolo any more that night?

A. No, sir. We left.

Q. Did you see any other of the complaining witnesses, Priest, Robinson or Purnell, on the 26th?

A. No, sir.

Q. When was the first time you saw either one of them?

A. I saw Mr. Priest the next day on the 27th of March, 1947.

Q. About what time?

A. Shortly after noon. I would say one o'clock.

Q. What was the occasion, if you can recall?

465 A. As I recall, Mr. Giroux, Mr. Williams, and Mr. Perry came to the lumber yard there to renew their questioning. They asked me, Mr. Williams asked me to have Mr. Priest to come over. I went over to the yard manager there and as I recall it, Mr. Priest was out on a delivery and wasn't there at that time.

Q. When did you see him that afternoon?

A. I saw them later on. Mr. Priest not being over there, I went over to the office, and when I went over to the paint shop, Mr. Priest was in there with Mr. Williams, Mr. Perry and Mr. Giroux.

Q. Did you go in?

A. I did.

Q. How long did you stay in the paint shop?

A. I stayed in there in intervals of about fifteen or twenty minutes each. I left there to go to the office it being the daytime hours.

Q. How long was Mr. Priest questioned?

A. Mr. Priest was in there I would say an hour or two. Probably two hours. And then Mr. Williams went out with Mr. Priest, and Mr. Williams asked me to ask Mr. Hatfield to come in.

Q. Did you get Mr. Hatfield?

A. I did.

Q. Did he go in?

A. He did.

466 Q. Was he questioned?

A. He was.

Q. How long was he questioned?

A. I would say about an hour—not more than that.

Q. Where was Priest during this time, if you know?

A. I do not know.

Q. Was he in the paint shop?

A. He was not.

Q. When was the next time you saw Priest?

A. After Mr. Hatfield, another truck driver, left, I went out also, and went over to the office.

And Mr. Priest was in there with Mr. Williams, Mr. Giroux and Mr. Perry.

Q. About what time was that?

A. I would say four o'clock or a little later.

Q. What was going on in the paint shack at that time?

A. Mr. Priest was being questioned.

Q. How long before he went out the next time, if you remember?

A. I don't exactly know when he went out the next time, because at about five o'clock, I again went over to the office, and then I went out and had supper, and came back there to the paint shop.

Q. Approximately what time did you arrive back at the paint shop?

A. I would say somewhere in the vicinity of eight
467 o'clock.

Q. Was any questioning going on at that time?

A. Yes, sir.

Q. That is, on the 27th of March?

A. March 27, 1947, yes, sir.

Q. Who was being questioned then?

A. Mr. Priest.

Q. Who was in the shack at that time?

A. Mr. Williams, Mr. Perry and Mr. Giroux.

Q. Was Mr. Bombaci there?

A. No, sir.

Q. Was Mr. Ford there?

A. No, sir.

Q. Was Mr. Bombaci or Mr. Ford present on the 26th of March?

A. No, sir.

Q. Did Mr. Priest confess to stealing any materials and supplies from the company?

A. He did.

Q. Was his confession taken down in longhand?

A. It was, by Mr. Giroux.

Q. During that time, did you ever see anyone strike or hit Mr. Priest with any object that might have been a hank of rope, a hose, or a flat stick or a dowel stick?

A. No, sir.

Q. Did you ever see him struck with any of them?

468 A. No, sir.

Q. Did you ever see him struck with a fist or with a hand?

A. No, sir.

Q. Who did you see on the 28th of March?

A. On the 28th of March, 1947, I first saw Mr. Purnell.

Q. About what time was that?

A. About five o'clock. Probably a little before five, Mr. Williams and Mr. Perry and Mr. Giroux came to the yard there, over to the paint shop. Mr. Williams said that he and Mr. Perry were going to pick up a city detective and Mr. Williams told Mr. Giroux to start the questioning. Mr. Giroux asked who, and Mr. Williams told Mr. Giroux to use his discretion and judgment on that. Mr. Giroux asked me to ask Mr. Purnell to come across the street to the paint shop. I did go across the street to the lumber yard, and asked the manager—I tried to find the manager, as a matter of fact, but I couldn't do so—so I asked Mr. Sullivan, who was next in charge of Mr. Purnell. Mr. Sullivan evidently sent Mr. Purnell up to me, because he did come there. I told Mr. Purnell that we had some investigators across the street that would like to ask some questions, and I walked across the street, and he followed me.

Q. Did you go in the paint shop?

A. I did.

Q. Did he follow you?

469 A. He did.

Q. How did you gain admittance into the shack?

A. I opened the door and walked in.

Q. Was it locked?

A. It was not.

Q. Was that the east door?

A. Yes, sir.

Q. How long did you stay in there?

A. About five or ten minutes. It again being around five o'clock, it was necessary for me to go around to the office.

Q. That left who in the shack—the paint shop?

A. Giroux and Purnell.

Q. Up to that time, had you ever seen Mr. Bombaci present any any of the interrogations?

A. No, sir.
Q. Up to that time, had you seen Mr. Ford present?
A. No, sir.
Q. When was the first time you saw Mr. Ford?
A. I saw Mr. Ford on that same night, March 28, 1947.
Q. About what time?
A. I would say somewhere in the vicinity of six o'clock. Around dinner time, as I recall it.
470 Q. Where did you see him?
A. I saw him over at the paint shop of the Lindsley Lumber Company.
Q. Was he in the paint shop?
A. He was.
Q. Who were in there with him?
A. Mr. Perry, Mr. Williams, Mr. Giroux and Mr. Purnell.
Q. Mr. Bombaci was not in there then?
A. No, sir.
Q. When, if you know, did Mr. Bombaci arrive, if he did arrive, on the 28th?
A. He arrived on the 28th, the exact time, I do not know, because I had left to go over to the office, and subsequently to eating my dinner, and when I came back there, Mr. Bombaci was there. That was the first I saw him.
Q. That was approximately what time, the best you can remember?
A. I would say somewhere in the vicinity of nine or nine-thirty. Something like that.
Q. I believe you said that you left the office at approximately six o'clock, and went over to the paint shed and saw Mr. Ford, Mr. Perry, Mr. Giroux and Mr. Purnell?
471 A. That is right.
Q. That was the only ones present at that time on the 28th of March?
A. That is correct.
Q. What was going on in there when you entered?
A. When I entered in there, evidently Mr. Williams and Mr. Perry and Mr. Ford had just returned, because Mr. Giroux was explaining something to Mr. Williams relative to Purnell's confession.
Q. Did you hear Mr. Purnell make a confession of materials and supplies that he had taken or stolen from the lumber company?
A. The confession was read to me by Mr. Giroux and substantiated by Mr. Purnell.

Q. Do you remember offhand what he confessed to stealing?

A. Yes. Some materials for his kitchen.

Q. Do you remember how much?

A. The way I recall it now, there wasn't any great amount. I mean, it wasn't in excess of maybe $10, shall we say.

Q. Did he give that confession shortly after you entered in the building after six o'clock?

472 A. No. As I said, he must have given the confession to Mr. Giroux prior to that.

Q. What was he questioned about after you entered?

A. After I entered there, he was being questioned about other materials that he may have stolen besides that.

Q. When was the next time you saw Mr. Purnell?

A. When he went out the door with Mr. Williams.

Q. About what time was that?

A. I would say somewhere in the vicinity of seven o'clock. Between seven and seven-thirty.

Q. Did you see him anymore on the 28th?

A. No, sir.

Q. That is the last time you saw him?

A. That was the last time I saw him.

Q. Who did you see next?

A. I next saw, on the 28th, Mr. Robinson, I believe. That is correct—Mr. Robinson.

Q. About what time did you see him?

A. Somewhere in the vicinity of nine o'clock or nine-thirty.

Q. During the time you saw you were in the paint shed, did you ever see anybody hit or strike Purnell with any object whatsoever?

A. No, sir.

Q. Did you ever see anybody hit or strike him

473 with their hand, fist or arm?

A. No, sir.

Q. You say Robinson was questioned at approximately nine-thirty?

A. That was the time I got there.

Q. Who was there when he was questioned?

A. Williams, Perry, Giroux, Bombaci, myself and Mr. Robinson.

Q. That is the first time Bombaci has been present at any of the questioning, that you know of?

A. That is correct.

Q. That was approximately nine-thirty?
A. That is right.
Q. Do you remember whether or not Mr. Ford was there?
A. I don't know whether it was exactly that time. Mr. Ford was there that night.
Q. You don't know whether he was there at the time Robinson was brought in at nine-thirty, but you do know Mr. Ford was there before nine-thirty?
A. When I came there, Mr. Robinson was already inside the paint shop, and I don't recall seeing Mr. Ford at that time, but I did see him later.
Q. Did you see him before that?
474 A. No, I did not see him before that. Yes—I beg your pardon. I did see Mr. Ford before that, because Mr. Ford did come back with Mr. Williams and Mr. Perry when they went to pick him up. That was when I first met Ford.
Q. What took place when Mr. Robinson was being questioned?
A. Mr. Robinson was being questioned, and being questioned upon his activities, his routine, and his method of handling sales—things of that nature.
Q. Who was doing the questioning?
A. Mr. Williams, mostly.
Q. Did you at any time ever question Mr. Robinson, Purnell or Priest?
A. I do not recall doing so.
Q. Did you ever question Mr. Sturniolo?
A. I do not recall it—no, sir.
Q. Did Mr. Robinson confess to materials and supplies he stole from the company?
A. He did.
Q. Who took that confession down, if you know?
A. Mr. Giroux.
Q. How long was Mr. Robinson questioned, if you remember?
A. I would say for several hours.
Q. Approximately what time did he go out?
475 A. I imagine he went out about eleven or eleven-thirty. Something of that nature. Possibly a little earlier.
Q. Did someone else come in then?
A. Yes.
Q. Did Mr. Sturniolo come in then?
A. Mr. Sturniolo came in. That is correct.

Q. Where did Mr. Robinson go when he went out approximately eleven-thirty?

A. I do not know. He went out with Mr. Williams, and I believe Mr. Ford.

Q. You did not go outside?

A. No, sir.

Q. And they came back in and Mr. Sturniolo came in?

A. That is correct.

Q. Approximately how long did they question Sturniolo?

A. I imagine they questioned Mr. Sturniolo for several hours.

Q. Who questioned him?

A. Mr. Williams.

Q. Anybody else?

A. Possibly Mr. Perry, and I believe Mr. Giroux asked him some questions also.

476 Q. Did you ask him any questions?

A. No, sir.

Q. I believe you stated he had already given a confession and you had recovered a quantity of supplies and materials from his home that he stated he stole?

A. That is correct.

Q. What was the purpose of this questioning?

A. The purpose of this questioning was, for one thing, for additional information secured from Mr. Priest and I believe, Mr. Hatfield, that Mr. Sturniolo, in addition to his taking or stealing this material, also stole other material he had sold to customers of Lindsley Lumber Company on his deliveries.

Q. Let's go back to Mr. Priest. Do you remember in what capacity Mr. Priest was employed during March, 1947?

A. Yes, sir. He was a truck driver.

Q. As a truck driver, did he at any time have any authority to make any occasional cash sales to customers?

A. No, sir.

Q. Was it the practice at that time, to give a discount for cash sales?

A. It was.

477 Q. That still is the practice, I understand.

A. It still is.

Q. In regards to Sturniolo, I believe you heard him testify he bought a 2 x 4 from Lindsley, and he would buy two or three pieces of lumber from another company, etc.?

A. I did.

Q. At the time he was questioned and he gave his confession, did he make any statement about where he had purchased, or if he had purchased any material from any other lumber yard?

A. He did not.

Q. Being a salesman, did he get a salesman's discount for any materials and supplies that he might buy there, in excess to the ordinary customer?

A. He was a truck driver, but there was no distinction between any of them, all employees getting a 10% discount on any material bought from the lumber company.

Q. So any material he bought from Lindsley would have been 10% less than the ordinary customer could have purchased it?

A. That is correct.

Q. Did you say he made any statement in regards to any purchases?

A. He did not.

478 Q. Did he mention any other companies at all?

A. I heard him mention none.

Q. I want to ask you again. Did you at any time while you were present in the shack, see any one strike either Mr. Priest, Mr. Purnell, Robinson or Sturniolo?

A. No, sir.

Q. Was the questioning a little rough at times, or was it in the ordinary parlor language, shall we say?

A. It was a little loud. I wouldn't say it was rough.

Q. Did you hear any cursing going on?

A. I heard profanity, yes.

Q. By whom?

A. By Mr. Williams and also by the employees that were being questioned.

Q. Did you hear Mr. Priest make a statement to Mr. Williams in regards to the Ku Klux Klan?

A. I remember something being mentioned about the Ku Klux Klan, but I can't connect to any one individual or any one individual's statement.

Q. You don't remember the exact conversations that took place?

A. I do not.

Q. You do know there was cursing on both sides?

A. That is correct.

479 Q. Mr. Yuhas, did you at any time enter into any conspiracy with either any or all of the defendants, relative to depriving either Priest, Purnell, Robinson or Sturniolo of any of their civil rights, by beating or otherwise mistreating them?

Q. Did you at any time see any of the defendants depriving either Priest, Purnell, Robinson or Sturniolo of any of their civil rights by beating or otherwise mistreating them?

A. No, sir.

Q. Did you at any time aid or abet any of the other defendants in depriving either Priest, Purnell, Robinson or Sturniolo of any of their civil rights by beating them or otherwise mistreating them?

A. No, sir.

Mr. Strickland: That is all.

Cross Examination.

By Mr. Botts:

Q. With reference to the Sturniolo lumber, isn't it true that Mr. Sturniolo claimed that he had acquired some of this material by purchase from other lumber companies, such as Cheely—I recall that name—or someone else?

A. I didn't hear that.

Q. You do not say he did not, do you?

480 A. That is exactly correct, that I did not hear it.

Q. Can you give me a list of the materials that you took from, or caused to be taken from the home of Sturniolo?

A. The materials that was loaded on the truck at Sturniolo's home, was the same as was on the list that was presented in this court a day or so ago.

Q. I am asking you if you can tell me what they were.

A. No, sir, I can't at this point. That is two years ago, Mr. Botts.

Q. Can you give me any part of it?

A. There was roofing.

Q. By roofing, do you mean rolls of roofing paper?

A. Yes, sir. I think I recall some screening of some kind, either heavy or light. I know there was lumber, of course. I believe there was some cement.

Q. Let me ask you this. Was there any mark, whether the Lindsley Lumber Company's name or Dania Supply Company, on any of this materi' which was taken from Sturniolo's home?

A. In answer to this question, I would like to

481 tell you there was no name on that material, but we have a peculiar—I think it is peculiar to our organization, in marking our lumber with chalk crayon as to lengths, etc., right on the edge of the lumber.

Q. Isn't that done in every lumber yard you ever saw?

A. I didn't think so. Maybe so, but I didn't think so.

Q. Was there any mark on this roofing material or screening or anything to indicate the source from which it had come?

A. The roofing, for instance, was the roofing handled. Whether anybody else handled that or not, without going into that in detail, I wouldn't be able to tell you. We have some types that have our name of Dania Supply Company. I don't know. I am not primarily a lumber man. I am primarily a booking man, Mr. Botts, a bookkeeper.

Q. What I am trying to get at is—was there any mark on any of this material from which you could say that was the material belonging to Lindsley Lumber Company, when you caused it to be taken from Sturniolo's house?

A. In my limited knowledge, I would say I don't
482 know. It was, however, taken in and checked; a list made of that the following morning by our yard manager, and our yard manager said that was our materials.

Q. You had material of that kind?

A. I don't remember his exact words, but I think he said that was our material.

Q. And you took it and kept it anyway?

A. We took it and we kept it in a separate pile, and have kept it.

Q. Didn't Sturniolo protest he had bought some of this material from Lindsley Lumber Company and paid for it, and he had bought and paid for the other, otherwise?

A. I did not hear that, Mr. Botts.

Q. Do you know whether or not Sturniolo had bought material from the Lindsley Lumber Company?

A. I do not.

Q. About this cursing. Who was the first person of these four men that you heard either cursing or being cursed?

A. Mr. Botts, as I said before, I knew there was profanity going on there. As to who did it or when, it is hard for me to specifically say.

Q. Are you able to say now whether or not
483 Sturniolo was cursed or did any cursing in either of the interviews?

A. I would say there was profanity going on during the questioning of Priest and Sturniolo. That is as close as I can get to it.

Q. Was there any profanity that went on when Purnell was in there?

A. Not that I recall—no, sir.

Q. Did you ever curse Mr. Purnell for a "son-of-a-bitch"?

A. No, sir, not that I can recall.

Q. Did you hear Priest so cursed?

A. Mr. Botts, I tried very sincerely to answer that question before; that profanity went on during those two questionings, as closely as I can recall. I can't make a direct answer to that.

Q. As to Robinson, did you hear Robinson cursed?

A. I don't recall that, no, sir.

Q. Isn't it true that each of these four men, when they were first questioned, denied that they had stolen any goods or had any part in stealing? Isn't that true?

A. That is true.

Q. And ultimately you say each one of those men
484 confessed that his first statement was untrue and that he had either stolen or he had a part in stealing, is that right?

A. They confessed later on, yes, sir.

Q. What method of persuasion was used to induce these men to ultimately confess to thievery?

A. Being repeatedly confronted with the facts and evidence.

Q. And what facts did you confront—for instance, Robinson. With what facts did you confront him?

A. The investigators had reports.

Q. Did you rely on those reports?

A. I imagine the investigators did.

Q. What fact in those reports showed that Robinson had been dishonest?

A. In those reports it stated that Mr. Robinson had loaded material on a customer's car, and having received money and put it in his pocket and never having made a ticket. That would be a fact, as I see it.

Q. What method of persuasion was used to get Robinson to admit that that was a fact?

A. I don't know if you call it persuasion. It was questioning. He was being questioned.

485 Q. And was that all?

A. That was all—yes, sir.

Q. Were these men or any one of them at any time threatened in any manner, way, shape or form?

A. No, sir.

Mr. Botts: That is all.

Re-direct Examination.

By Mr. STRICKLAND:

Q. Will you explain the lighting system in that shed or shack? Just describe how it was during the month of March, 1947?

A. To the best of my recollection, the lighting system there consisted of a series—by series, I would say at least three or four overhead lights, with the shades in sockets in the upper ceiling of the shed or shop.

Q. Were those sockets connected directly to the ceiling?

A. As I recall it, yes, sir.

Q. There was no drop cord between the ceiling and the actual light bulb?

A. No, sir.

Q. How large a building is that?

A. I would say it would be fifteen by thirty.

Q. How high is the ceiling?

486 A. I would say about eight feet.

Q. So as I understand it, a bulb screwed in the socket would be almost eight feet from the floor?

A. That is correct.

Q. There was no drop cord or lamps in the shack?

A. No, sir.

Q. That is the only lighting system in that shack?

A. Yes, sir.

Q. Is any other lighting system used in that shack?

A. No, sir.

Q. Did you see any other lights used during either the 26th, 27th or 28th, other than the lights you described on the ceiling?

A. No, sir.

Q. Is there a light on the outside of the building to the east, that lights up the parking area in there?

A. Yes. I would say it would be to the southeast right on the corner.

Q. That whole area in there is a parking area for customers, is it not?

A. Yes, sir.

Q. Approximately how far from the sidewalk is this paint shop?

A. I would say thirty-five or forty feet.

487 Q. Is it about the same distance from that other main office building due south of the shack?

A. I would say it would be less.

Q. Due north of the shack is there a house?

A. There is.

Q. Approximately how far from the shack is this house?
A. I would say about thirty feet. Something like that.
Q. Is there anyone living in that house?
A. Yes, sir.
Q. Was there anyone living in that house during the month of March, 1947?
A. As I understand it, there has always been someone living there.
Q. That is a family residence, is that right?
A. That is right.
Q. Did I ask you how long you had lived in Miami?
A. You did not. I have lived in Miami about fourteen or fifteen years.
Q. How long have you been employed by the Dania Supply Company?
488 A. About thirteen years.
Q. In the same capacity, as accountant?
A. That is correct.
Mr. STRICKLAND: That is all.

Re-direct Examination.

By Mr. CUSHMAN:
Q. As I recall the testimony of Mr. Purnell, he testified that while he was in the car in front of the paint shed, that you came to the car, and he asked you to make a telephone call to his home. Did that occur?
A. No, sir.
Q. Did you ever see Mr. Purnell in a car in front of the paint shed?
A. I did not.
Mr. CUSHMAN: That is all.

Re-cross Examination.

By Mr. BOTTS:
Q. Mr. Yuhas, you have stated that that building was about fifteen by thirty. Which way is the long way—east and west, or north and south?
A. The long way is east and west.
Q. I believe it has been stated that it is on the west side of the street, so it faces east towards the street?
A. That is correct.
489 Q. And is the door, the entrance door, in the center of the east end?
A. That is right.
Q. Is there another entrance door at the rear end?
A. There is what you might call an aluminum garage door on the back. It is an overhead door.

Q. Would you mind stepping down here and drawing a place, an area fifteen by thirty, and approximately as wide as it is long, and point the points of the compass and show where the windows are.

A. (Witness draws sketch.)

Q. In this east end of the structure will you show where the door is? Just draw two cross lines. That door is approximately what width?

A. I would say it would be about two and a half feet, or three feet wide. Just an ordinary door.

Q. In the center of that east end?

A. That is correct.

Q. Will you show the door at the west end? That is a wide door nearly the width of the building?

A. It is just an overhead garage door.

Q. Will you make an "x" mark here at approxi-
490 mately the point which would be below the lights which you say were in there?

(Witness indicates on sketch.)

Q. You have used a circle instead of an "x" but it is all right.

A. I am sorry.

Q. Let it be noted that it is circles. Where is the switch that turns on those lights?

A. I don't recall where it is, frankly.

Q. Where was the table at which Mr. Giroux was seated?

A. It was about here (indicating).

Q. And put a capital "T" there, meaning table. And then put a small "g" at approximately the place where Mr. Giroux was seated. Where was the chair upon which the persons being examined were seated?

A. How would you like me to designate that?

Q. A capital "C" for chair. That was approximately in the center of the room, both east and west and north and south?

A. As I recall it, that is correct.

Q. Where did you sit during the course of the questioning, or stand?

491 A. May I add a desk, which is a part of that room?

Q. Certainly.

A. May I designate that with a "D"?

Q. Write the word "Desk" there, and that will make it clearer. By the way, was this room divided into sections or parts in any way?

A. No, sir, it was not. The impression might be that the desk would divide it.

Q. But there was no partitioned off area?

A. No, sir.

Q. Will you indicate now, as near as you can, the place where you were stationed, whether you were sitting or standing, during the course of that questioning.

A. I would like to do that by drawing a sort of semi-circle.

Q. Would you mind writing your name there? "Yuhas"?

A. (Witness indicates.)

Q. Where was Mr. Williams stationed? You can write "Williams".

Mr. FLOYD: During which examination? There were twelve examinations.

The COURT: That is for the witness.

The WITNESS: He was at different places.

492 By Mr. BOTTS:

Q. Where was Mr. Ford stationed during the time you saw him?

A. At the time I saw him, he was stationed about there (indicating).

Q. Make some kind of indication and write the name "Ford". That was a general area and not a particular spot?

A. That is correct.

Q. Where are the windows in that building? Would you mind drawing a double line that would show which is a window and which is not?

A. (Witness indicates.)

Q. Then as I understand it, there were six windows on each side?

A. As I recall it, yes, sir.

Q. Were those windows open or closed during this questioning?

A. As I recall it, there were one or two that were open.

Q. Were they open so anyone could look in and see what was going on?

A. They are high windows, Mr. Botts. I would say they were about four to five feet from the bottom. The house is on concrete piling, you might say.

493 The COURT: Have you finished that cartography, Mr. Botts?

Mr. BOTTS: Not quite, Your Honor.

By Mr. Botts:

Q. How high were the windows above the ground or the floor inside?

A. I would say about four or five feet.

Q. Above the floor?

A. You said above the ground.

Q. Above the floor on the inside?

A. Yes.

Mr. Botts: I am asking that the sketch be marked as the Government's next exhibit.

(Whereupon, the document above-referred to was marked Government's Exhibit No. 10 and received in evidence.)

Mr. Botts: That is all.

Mr. Strickland: That is all.

(Witness excused.)

494 A. R. Lindsley was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. Roberts:

Q. State your name.

A. A. R. Lindsley.

Q. Your official position with the Dania Supply Company?

A. I am chairman.

Q. How long have you lived in this portion of Florida?

A. Since 1925.

Q. You know Mr. Williams, one of the defendants here?

A. I do.

Q. When was the first time you became acquainted with him?

A. About—I believe it was in the fall of 1946.

Q. What was the occasion of your knowing him?

A. He came in to call on me and solicit business.

Q. What was, in brief, the general gist of the conversation you had at that time?

A. He said he was very competent and capable in taking charge of any investigations I may wish to make. And he left his card with me, and it—I put it in my desk and kept it.

495 Q. When was the next time you got in touch with him, approximately?

A. I would say about two months after that call.

Q. And what was the reason for your getting in touch with him?

A. The question of thefts had been coming in—reports from customers, contractors and employees.

Q. You mean by that there was quite a bit of stealing going on in the various lumber yards?

A. There were rumors.

Q. So you got in touch with Mr. Williams?

A. Yes, sir.

Q. And did you enter into some kind of contract with him?

A. I had a verbal understanding.

Q. And what was that?

A. That he was to investigate.

Q. To see who did the stealing?

A. Yes, sir.

Q. When, approximately, did he start this investigation?

A. Are you talking about the 17th Avenue yard?

Q. Did he start investigating any of the other yards prior thereto?

A. I believe so.

496 Q. Approximately when did he start the other yards?

A. About the time I called him, about two months after I first saw him, I would say along in November or December.

Q. And then when did he start the investigation at the 17th Avenue yard?

A. I believe around the first of February, Mr. Roberts.

Q. The main office of Dania Supply Company is right across the street from the 17th Avenue yard, is it not?

A. Yes, sir.

Q. Why do they call that the paint shed?

A. The advertising department used that to paint the signs for display; the supplies were kept there.

Q. Mr. Williams started on the first of February, approximately. Did you get any reports from him as to his investigation?

A. Yes, sir.

Q. How frequently did you get those reports?

A. About every day.

Q. They would tell you what his agents or under-covermen were finding out in the various yards, is that correct?

A. Yes, sir.

Q. Did he have any of his men who were actually doing physical labor in the yards?

A. He did.

497 Q. In other words, the rest of the employees thought his agents were just other employees?

A. I assume so.

Q. They would move lumber and haul cement and do manual labor like that?

A. Yes, sir.

Q. Do you—

Mr. Botts: He is leading the witness, if Your Honor please.

The Court: If you have an objection, make it, and I will rule on it.

By Mr. Roberts:

Q. Do you know of any interrogations of suspects that were had prior to approximately March 26?

A. I do not recall them, Mr. Roberts.

Q. Do you recall the circumstances of the interrogations of these different men being started toward the end of March—March?

A. I recall the time the questioning started, yes, sir.

Q. What feature of that do you recall?

A. I recall Mr. Williams coming into my office and saying he was ready to start questioning these people.

Q. That was approximately what date, if you recall?

A. I guess it was the 26th of March, because that is when it started, because he started right away.

498 Q. You were not present at any of the interrogations yourself?

A. No, sir.

Q. All you know of what happened there is what you have heard?

A. That is right.

Q. What was your understanding with Mr. Williams, or his instructions as to what he was to do for and on behalf of the Dania Supply Company?

A. Mr. Williams was to investigate and report to the Dania Supply Company what he found.

Q. And he had been making daily reports and continued to do so?

A. That is right.

Q. Did you at any time enter into a conspiracy with any or all of the defendants here to deprive Priest, Sturniolo, Purnell and Robinson of any of the civil rights by beating them, hitting or striking them or otherwise mistreating them?

A. No, sir.

Q. Did you at any time see any of the defendants here, including yourself, deprive Sturniolo, Robinson, Priest or Purnell of any of their civil rights by their being beaten, or otherwise mistreated?

A. No, sir.

Mr. Botts: May I ask that counsel not refer to
499 this gentleman as a defendant?

The Court: Yes, that is correct. Mr. Lindsley himself is not a defendant.

By Mr. Roberts:

Q. I don't mean to include yourself as a defendant. I mean the alleged corporation. Did the alleged corporation, Lindsley Lumber Company, or did Dania Supply Company, at any time aid or abet any of these defendants in this case in depriving either Priest, Purnell, Robinson or Sturniolo of any of their civil rights by beating or otherwise mistreating them?

A. No, sir.

Q. In these last three questions I have asked you, if they were applied to you as an officer of the Dania Supply Company, would your answers be the same?

A. They would.

Mr. Roberts: That is all.

Cross Examination.

By Mr. Botts:

Q. Did you designate anyone to act on behalf of your company to assist Mr. Williams?

A. No.

Q. Particularly, did you give Mr. Yuhas any instructions with reference to his assistance or cooperating with Mr. Williams?

A. I asked Mr. Yuhas to go with Mr. Williams.
500 Q. And what did you ask him to do? What was the purpose of him going with him?

A. Mr. Williams asked me if I wanted anybody there during the questioning, and I said yes, I would like to have Andrew Yuhas with him during the questioning.

Q. So Mr. Yuhas was designated as being the representative of the company to attend the questioning operations, is that right?

A. He was asked to go with Mr. Williams—yes, sir—during the questionings.

Q. Is he an officer or employee?

A. He is an employee.

Q. Is there anyone connected with your organization known familiarly or otherwise as Mr. Rock Lindsley?

A. There was at that time, and there is yet—my son. He is known as "Rock" Lindsley.

Q. What is his true name?

A. The same as mine—Augustus Rockwell.

Q. The "R" in your name stands for Rockwell, and that has been cut down in the case of your son, so he is familiarly known as "Rock" Lindsley?

A. That is right.

Mr. BOTTS: That is all.

(Witness exeused.)

501 CHARLES R. FORD was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. CUSHMAN:

Q. Did you know Dr. Becksted?

A. Yes, sir.

Q. Do you know whether he is in the City of Miami now?

A. He is not.

Q. Do you know what city he is in?

A. Dayton, Ohio.

Q. Do you know how long he has been gone?

A. He has been out of the city about a year and a half.

Mr. CUSHMAN: I have no further questions.

Mr. BOTTS: No cross examination.

(Witness excused.)

Mr. CUSHMAN: I would like to introduce in the record in the personnel file of Mr. Ford, the three portions I have pointed out.

Mr. BOTTS: No objection.

The COURT: It is stipulated by counsel for the Government and the defendant Ford, that—go ahead.

Mr. CUSHMAN: That the defendant Charles R. Ford, may read into the record, three documents from the personnel file of Charles R. Ford.

502 One, "Commendation", dated August 13, 1947, from Frank Mitchell, Chief of Police, to Sgt. Charles R. Ford; two, a "Memorandum" entitled "Favorable Mention", from W. E. Headley, Assistant Chief of Police, to Sgt. Charles R. Ford, dated January 15, 1948; three, a "Memorandum" entitled "Commendation" to Sgt. Charles R. Ford, dated February 19, 1948, from W. E. Headley.

The first is as follows: (Reading)

"Memorandum; To Sgt. C. R. Ford; Date August 13, 1947; File C.02.01 & Personnel; Subject Commendation; From, Frank Mitchell, Chief of Police.

I think there is no better way to explain my reasons for granting this commendation for your recent creditable performance than to quote in its entirely Officer O. D. Henderson's memorandum to me on August 10, 1947.

'Yesterday, August 10th at approximately 12:30 P. M. I was following Bess' ambulance to Jackson Memorial Hospital with a patient who was critically injured, when a car driven by a negro attempted to race with the ambulance on NW 12th Avenue between 20th and 22nd Streets.

By this Negro holding his position beside the ambulance, the ambulance was forced to the wrong side of the street, endangering the lives of the ambulance driver and the attendant and the patient, inasmuch as they would have been on the wrong side of the street when they reached 20th Street and there are a number of large trucks coming to the corner at the Curb Market.

503

Sgt. Ford, driving his car directly behind mine, saw the danger of this, drove his car off of the road and into the weeds to block 20th Street as the ambulance approached this intersection. In doing this, he forced the tractor-trailer truck aside, preventing it from hitting the ambulance. The ambulance went on and we subdued the Negro and put him in jail.

This is the type of thinking and backing police officers appreciate from their commanding officers.'

Copy of this commendation is being sent to the Civil Service Board to be placed in your personal file as a permanent record. It is indeed a pleasure for such worthy performance of duty to be brought to my attention.

cc: Director of Public Safety.

cc: Civil Service Board.

Blind Copy: Larry Tanner, Miami Police News." (Ends reading.)

The second one: (Reading)

"Memorandum: To Sgt. C. R. Ford, Policeman M. M. Ogle, Policeman L. N. White; Date, January 15, 1948; File, Personnel and C.02.01; Subject, Favorable Mention; From W. E. Headley, Assistant Chief of Police.

I am in receipt of a very complimentary letter from W. O. Brooks, 510 Railroad Avenue, which was directed to Mr. H. G. Danner, City Manager, and referred to me for appro-

priate attention. Mr. Brooks was the defendant in a
504 case in which a warrant was issued for his arrest.
His letter expresses his sincere appreciation for your extreme courtesy at the time you served the warrant at his home.

In recognition, I am pleased to send you this memorandum, a copy of which is being sent to the Civil Service Board to be placed in your personal files as a matter of permanent record.

I hope this will be an encouragement to continue such fine performance which evokes comment of this character and reflects credit upon you and the entire Division of Police.

APPROVED:

cc: Civil Service Board.

cc: Director of Public Safety." (Ends reading.)

And the next dated February 19, 1948; (Reading)

"To Sgt. C. R. Ford; Date February 19, 1948: File, P.2.2 & Personnel; Subject, Commendation; From W. E. Headley, Assistant Chief of Police.

I was greatly pleased to receive a personal visit from Mr. Theodore Skivirsky, owner of Kal-Me-Ted, 1 NW 62nd Street, Miami, who wished to pay high tribute to your recent alertness and efficiency demonstrated when you discovered on the outside of his building that a ventilator fan blade had been bent and immediately made the deduction that it was possible that this could have been done by burglars only a short time before.

505 I am informed that you called Sergeant Rice and Policeman Bush for assistance. When it was discovered that it required a smaller man to enter the opening where this exhaust fan blade had been bent, Policeman DiLucchio was also called because of his small build. After DiLucchio entered, it was found that three burglars were still in the building and their capture was effected. Mr. Skivirsky said that had he noticed the bent fan blade himself, he would not have attached any importance to the fact, and was profound in his praise for your vigilance.

I must observe that this comes under the heading of "fine police work" and it affords me great pleasure to confer upon you this official commendation, a copy of which is being sent to the Civil Service Board to be placed in your personal files as a matter of permanent record.

cc: Civil Service Board.

cc: Director of Public Safety.

APPROVED:

Frank Mitchell, Chief of Police." (Ends reading)

The COURT: Adjourn court until nine-thirty tomorrow morning.

(Whereupon, at 4:30 o'clock p. m., court was adjourned until Thursday morning, January 20th, at 9:30 o'clock, a. m.)

506 (Court was reopened for the trial of this case on Thursday, January 20th, at 9:30 o'clock, a. m.)

PROCEEDINGS

The COURT: Have the defendants further testimony?

Mr. FLOYD: If your Honor please, the defendant Perry would like to call a witness.

A. G. HARKNESS was called as a witness, and being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. FLOYD:

Q. Will you please state your name and residence address?

A. A. G. Harkness, Coral Gables, Florida.

Q. How long have you resided in Miami or Dade County, Florida?

A. Twenty-three years.

Q. What position do you hold?

A. I am Chief, Deputy Sheriffs Department.

Q. How long have you held that position?

A. Going on sixteen years.

Q. And that is as Chief deputy?

A. Yes.

Q. And prior to the time you became Chief deputy, were you also in the law enforcement department?

A. No, sir.

507 Q. Mr. Harkness, are you acquainted with or do you know Joseph V. Perry?

A. Yes.

Q. Is this the Joseph Perry you refer to sitting here (indicating)?

A. Yes.

Q. How long have you known Mr. Perry?

A. I would say about four or five years.

Q. Did you know Mr. Perry through an acquaintanceship or through having employed him or worked with him?

A. I have never worked with him. He was a member of our road patrol. He was in our office.

Q. Are you familiar with his employment as a road patrolman in Dade County, Florida?

A I know nothing derogatory of his services—he was a good deputy.

Q. Are you familiar with his general reputation or character in the community?

A. I have never heard of anything against Joe.

Q. I asked you, are you familiar with it?

A. Only from the acquaintence I have had with him. I have always found him to be a square fellow.

Q. Are you familiar with it? Yes or no?

A. Just in a casual way, that is all. Just knowing him in the office.

508 Q. And from your observation of Mr. Perry, would you say that his reputation is good or bad in the community?

A. I would consider it has always been good.

Q. Are you familiar with his reputation for truth and veracity?

A. Yes.

Q. Is his reputation for truth and veracity in this community good or bad?

A. To my knowledge, it is good.

Mr. Floyd: That is all.

Mr. Botts: No questions.

(Witness excused.)

Mr. Botts: I would like to ask Mr. Ford a few questions, if your Honor please.

Charles R. Ford was re-called as a witness, and testified further as follows:

Cross Examination.

By Mr. Botts:

Q. Do you recall the morning after Mr. Robinson had been arrested? Do you recall that occasion?

A. Yes, sir.

Q. Do you recall that with Mr. Robinson present, you were called into the office of Capt. Barker?

A. Yes, sir.

509 Q. That was the occasion when the discussion was entered into resulting in Mr. Robinson being taken to the hospital, was it not?

A. That I don't know, sir.

Q. You don't recall?

A. No, sir, I do not.

Q. Shortly after that, did you take Mr. Robinson out to the hospital?

A. No, sir.

Q. Shortly after leaving Capt. Barker's office, or somewhere in that vicinity, did you have a conversation with Mr. Robinson in which you made a statement in substance, as follows, addressing Mr. Robinson: "You know, Robinson, that I didn't beat you, and that I did not like that a little bit, because when Williams started beating you, I would always walk down towards the other end of the shack"?

A. No, sir, I did not.

Q. You didn't make that statement?

A. No, sir.

Q. Or that statement in substance?

A. No, sir.

Mr. Botts: That is all.

(Witness excused.)

The Court: Is there further testimony on the part of the defendants?

Mr. Cushman: If the Court please, the only thing
510 we want to offer is to read the portion of Henry Giroux's testimony in the County Solicitor's office, that was identified by the young lady. It was introduced, but it was not read to the jury at the time.

The Court: All right.

Mr. Cushman: Perhaps it would be better if I asked Mr. Floyd to read the answers and let me read the questions. Is that permissible, Judge?

The Court: Yes.

Mr. Botts: May I ask who is going to personify Mr. Giroux?

The Court: He said Mr. Floyd. You understand what they are doing? This is the testimony of Henry Giroux in the County Solicitor's office, and Mr. Cushman is reading the questions and Mr. Floyd is reading the answers.

Mr. Botts: My understanding is they are not permitted to read the entire examination, but only those portions of it as to which they laid the ground for impeachment by questioning of the witness.

The Court: Is that your proposal?

Mr. Cushman: My proposal was to read the entire examination, because it bears on the testimony of Mr. Giroux.

The Court: The only way it would be permissible in my opinion would be in the way of contradiction.

511 And only such parts as do contradict anything the witness said would be here admissible. I don't think the whole deposition is admissible, and I so rule.

*Deposition of Henry B. Giroux*

(Mr. Cushman and Mr. Floyd reading deposition of Mr. Giroux.)

"By Mr. CUSHMAN:

"Q. Your name is Henry B. Giroux. You are employed by the Continental Detective Bureau?

"A. Yes, sir.

"Q. You are assisting in this investigation in which we have been interrogating the witnesses?

"A. Yes, sir.

"Q. Did you assist in any of these interviews with the suspects?

"A. Yes, all of the interviews.

"Q. You have heard my questions put to Mr. Yuhas and Mr. Williams in reference to any coercion, duress, brutality, beating, handcuffing or imprisonment of these suspects.

"A. None of that was used, sir."

Now, on Page 15, please sir, down here the bottom of the page.

"Q. Did you beat Sturniolo up?

"A. No, sir.

"Q. Did you ever lay a hand on him? In violence?

"A. No, sir.

512 "Q. Did you threaten him?

"A. No, sir.

"Q. Did you threaten, lay a hand on in violence or beat up any of those other suspects?

"A. No, sir.

"Q. Did you see anybody else do that?

"A. No, sir."

The next page continues—

"A. If anyone would have done that I wouldn't have had any part of it. That's the reason I know it didn't take place. We don't handle our investigations that way."

Mr. CUSHMAN: That is all of the testimony that you have ruled is pertinent.

The COURT: Is there further testimony on the part of the defendant?

Mr. CUSHMAN: The defendants rest.

The COURT: Is there rebuttal?

Mr. BOTTS: Yes, sir. Call Henry B. Giroux.

HENRY B. GIROUX was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. BOTTS:

Q. Mr. Giroux, I will ask you what was the requirement or regulation at least applicable to you at your office when you entered the office where Mr. Williams, known to you as the Chief, was present?

513 Mr. CUSHMAN: I object to the question.

The COURT: Objection sustained, as being a collateral matter and not subject to contradiction. I do not consider, and so hold, that this matter is subject to contradiction.

Mr. BOTTS: If the Court please, I do not wish to make the statement in the presence of the jury, but there is a special reason.

The COURT: Let the jury retire.

(Jury retires.)

Mr. BOTTS: If the Court please, I can ask the witness or I can state this. This witness has stated to me that these circumstances that I am about to ask him about, all of them taken together resulted in him being in fear of Mr. Williams, and that by reason of these acts he acted under duress in not interfering with the beatings out there and in his false statement before the County Solicitor. That is the sole purpose of this testimony; not to show that Mr. Williams was an exhibitionist, but to show that this witness was in fear of him and acted under coercion and duress, and that is the sole purpose, and I would ask the Court to admit it and to state to the jury if the Court thinks proper—

Mr. CUSHMAN: If the Court please, I suggest that that is not a valid reason for permitting the testimony.

514 The conduct of this particular witness is, I submit, not a particular material issue at this time. Whether he acted under duress or not, is not material to the issue we have here, and I submit it cannot add anything to the Government's case. It certainly does not tend to prove any charge of conspiracy against any of the other defendants. Whatever was the effect of anything Mr. Williams said to him, it could not effect anything in this case. I think it is true to the even numbered counts, because I think any statement of Mr. Williams to this witness would not have any bearing upon the intent with which any other person acted.

Mr. Botts is seeking now to prove the effect upon the mind of this witness. The statements he said Mr. Williams said to him at sometime, I submit, is not material, so far as the issues in this case are concerned, and can only serve to result in the last analysis, in an attempt to impeach a witness upon a purely collateral matter.

Mr. Botts: The veracity and integrity of this witness has been attacked in almost every conceivable way. In addition, the witness has admitted that at a certain time he testified falsely and I think he is entitled to give any reason that he may have—good, bad or indifferent—that resulted in him making the statements which he now says were false and bearing solely on his credibility.

515 The Court: It is my thought and practice to permit quite a wide latitude on cross examination, but I do not believe the law to be that a witness may be impeached by introducing evidence to contradict him as to collateral matters. I think this is one. I adhere to my ruling to sustain the objection. I thought it was a very good idea to go into that now, so you will be governed by it on your rebuttal.

Mr. Botts: If the Court please, will that apply to the practice of drawing a pistol, etc.?

The Court: Yes. I can't actually rule until the question is asked and answered.

Mr. Botts: If the Court please, I don't propose to ask him about the pistol. There is one other question I wanted to ask this witness—whether or not Mr. Williams ever made any threats to him as to, if he did not follow Williams' directions in testifying before the county prosecutor. Would your ruling apply to that question?

The Court: I think he has already testified to that. He testified that he made those statements, knowing them to be false, under the coercion of Williams, because he had been threatened and was scared of him.

Mr. Botts: If that is in the testimony, then I wouldn't care to ask that question again. I didn't understand that it went that far.

516 The Court: That is not the exact testimony, but it is the substance of what he said.

Mr. Botts: May I make this suggestion. My recollection —and with all this testimony, I certainly wouldn't pretend to be sure about it—my recollection is that the witness said he testified under directions of Williams because Williams said he had everything fixed. I do not recall him testifying he was in fear of Williams. I just don't recall that.

The COURT: If you have a doubt, I will permit you to ask him that question.

Mr. BOTTS: I will confine my questioning to that.

The COURT: Bring the jury in.

(Jury returns to court room.)

By Mr. BOTTS:

Q. Mr. Giroux, I direct your attention to the circumstances that you have admitted certain statements made to you in the county solicitor's office were false. I will ask you, and have stated it, as whose suggestion you say you made those statements. I will ask you if there was any circumstance existing which caused you to make those untrue statements other than the mere suggestion of the man you have referred to.

A. Yes, sir, there is.

Mr. CUSHMAN: I respectfully object to any other
517 question, because that is not the question Mr. Botts said he would ask.

The COURT: I am inclined to agree.

Mr. BOTTS: All right, your Honor.

By Mr. BOTTS:

Q. If the statements were false, why were they false?

A. Because every time I used to enter the office—

Q. No, don't go into that. Just tell us, why you make those statements?

A. Because he has threatened me on more than one occasion, and he said if I double crossed him—Mr. Williams—I would be taken care of.

Q. Mr. Giroux, I hand you your report, the report with the notation at the bottom that it was by Agent No. 7, and you stated that was you?

A. Yes.

Q. Of March 18, Defendant's Exhibit 6, and I will ask you to note the contents of that so you will understand the questions I ask you. I will ask you if the entire report is your language or not?

A. No, sir, it isn't mine.

Q. Whose language is reflected in that report?

A. Mr. Williams'.

Q. In what particulars is that true?

A. I did see Mr. Robinson in the shack, and he was
518 unloading cement. That is, loading cement on to this little car. And I did see a man pay him money and he slipped it in his pocket. And I stated that to the Chief when I got back to the office, and I told him I didn't see him go to the office. And as soon as he got through with that

customer, he started loading another customer's car, but I didn't stay there long enough to see whether he went in the office or not. The Chief said, "As far as I am concerned, the man is a thief and he is guilty, and just write it up that way." All he told—all I told him was exactly that. That I seen Mr. Robinson put this here supplies and a few little odd pieces here and there and some cement or lime out of that shack, and I seen the man pay him money, and make some gestures with his hands, and Mr. Robinson put some money in his pocket and he immediately started waiting on another man. And the Chief said, "Did you see whether he went in the office or not?" I says, "No, sir." He said, "As far as I am concerned, he is a thief, and he is guilty." And the rest is not my testimony. I did not write that.

Q. How far was it from the point where you were loading to the desk where the salesmen usually wrote up their tickets?

A. You have to go all the way through the other end of the yard, and the shed is 'way in the back.

Q. Approximately how far would that be? Fifty
519 feet, one hundred feet, twenty feet? How far?

A. I would say about one hundred fifty feet.

Q. Do you know whether or not Mr. Robinson, at a later time, after taking care of the immediate needs of the second customer, went in and wrote up the tickets on those sales?

A. That is what I told the Chief, that I didn't get a chance to see that. He may have. I didn't accuse Mr. Robinson of being a thief, because I don't know whether he took the money or not.

Q. I direct your attention to a report dated March 27, and also with the notation in typewriting, "Agent No. 7," and I direct your attention particularly to the matter on the second page, where the K. K. K. and Ku Klux Klan are mentioned. I will ask you if you were in the room when Mr. Priest was in there being interviewed?

A. Yes, sir, I was present.

Q. Now then, I will ask you if the K. K. K. or Ku Klux Klan were mentioned that day, and if so, state the circumstances.

A. When Mr. Williams started hitting Mr. Priest, Mr. Priest naturally objected. And he said that he had worked for the city on one occasion that he had friends that would see he would be punished for that. And he claimed he had rights, and the Chief didn't pay any attention to him.

520 And he said, "So, you have got connections. What are they in? The K. K. K.?" There was no answer from Mr. Priest whatever, because he looked up in those lights, and he was half blind. I did not write that—that is not true.

Q. Does that report bear your signature?

A. No, sir.

Q. Did you write that entire document?

A. I didn't write that entire document.

Q. Who did, if you know?

A. That is the first time I ever knew that that read like that. Mr. Williams observed that all agents were supposed to write what they seen, and he would elaborate on that, so that Mr. Lindsley, who liked to read juicy reports would like them, because Mr. Williams was afraid—

Mr. Roberts: We object, and ask that the jury be instructed to disregard it.

The Court: Sustained.

By Mr. Botts:

Q. Did Mr. Priest ever mention the K. K. K. or claim membership therein?

A. No, sir, he did not, definitely.

Q. You mentioned a person by the name of Mr. Rock Lindsley. Do you know about the use of that term, and to whom it was applied?

A. Yes, sir. All I know is that Lt. Perry and Chief
521 Williams used to go over to see old Rock Lindsley. Now, who old Rock Lindsley was, I don't know. I have seen young Rock Lindsley on one occasion, but I have never seen old Rock Lindsley. On several occasions he tried to get hold of old Rock Lindsley, but he was tied up or busy, but I have heard old Rock Lindsley's name mentioned numerous times, because before I was put on this particular case, I had to wait approval of old Rock Lindsley to designate and assign a particular yard for me to go to. And Mr. Lindsley called this particular day I was in the office, the day I was assigned to go, by Chief Williams, to go to the Hollywood yard and work. Old Rock Lindsley called him on the phone and he said, "It is all set. Thank you, Mr. Lindsley. I will have the man sent out there."

Q. How long did you work out at Hollywood?

A. Approximately a couple of months.

Q. How long did you work at the 17th Avenue and 38th Street business place?

A. The 17th Avenue yard, I never worked there. I was transferred from the Hollywood yard to the Buena Vista yard. And I was a helper on a truck.

The COURT: We have been into all that.

The WITNESS: On this truck I used to go to the 17th Avenue yard.

By Mr. BOTTS:

522 Q. Did you work at the 17th Avenue yard at all?

A. No, sir.

Q. The day that you observed Robinson, how did you happen to be there?

A. We were there on this truck to get these windows ploughed. We had to wait until they set up this machine to plough. I don't imagine we were there fifteen or twenty minutes at the most. We were kept very busy.

Mr. BOTTS: That is all.

Cross Examination.

By Mr. CUSHMAN:

Q. Referring to this document, Defendant's Exhibit 6, take a look at it. Just exactly what is there in that report that you say is not true, and that you didn't put there?

A. It says (Reading): "Agent No. 7 is at 17th Ave. yard of the Lindsley Lumber Company waiting for windows to be ploughed and goes around yard looking for possibilities to add to our information to date."

Q. Was that true?

A. For about five minutes, while the man got the plates to set up the machine.

Q. Read the next one.

A. (Reading) "Agent observes movements of man named Chester Robinson." That is true. "Agent finds Robinson loading car with supplies and finds nothing unusual in loading."

523 Q. Is that true?

A. That is true. "Agent follows Robinson around near back and this man hands Robinson money and Mr. Robinson puts it in his pocket."

Q. Is that true?

A. That is true. "Agent is positive no ticket was made for supplies." That is true. "Robinson approached another customer without even going inside." That is true. "This fellow customer seemed too friendly with Robinson." That is true. He seemed very friendly with Mr. Robinson. "Agent was hampered in this investigation and could only follow Robinson the one time; as Agent started to watch Robinson and second customer, Truck Driver Agent was with (named Mac, Truck No. 85) was called

over the speaker"—that is true, they have a loud speaker —"and Agent had to tell him as he is hard of hearing. Short time later we left yard." That is true.

Q. Everything up to that point is true?

A. Up to that point.

Q. Go ahead with the "Remarks."

A. (Reading): "REMARKS: Agent knows Robinson is guilty now."

Q. Is that true?

A. No. "Amount of cash Agent seen change hands
524 and Robinson stuck in his pocket, Agent is not certain as Robinson pocketed it fast." About the money part in his pocket, that is true. That one statement, "Agent knows Robinson is guilty now"—I did not put in there.

Q. That is the only thing you did not put in there?

A. That is not my opinion, because I had no positive proof.

Q. Everything that you said in there about what you saw and what you observed and what was done, you say that is true?

A. It isn't exactly in my writing.

Q. It isn't?

A. But the events that happened, they are very similar.

Q. Is it in your words?

A. Not exactly in my words, no.

Q. You didn't attempt to memorize anything, did you?

A. No, sir. I wrote everything down. I had a little notebook.

Q. Were you questioned by the county solicitor under oath about that matter?

A. Yes, sir.

Q. Do you remember testifying about it?

A. Yes.

Mr. BOTTS: That was gone into in chief.

525 The COURT: I over-rule the objection.

By Mr. CUSHMAN:

Q. You testified about that very incident when you were testifying under oath in the county solicitor's officer, did you not?

A: My orders were to say nothing.

The COURT: Answer the question first.

The WITNESS: Yes, sir.

By Mr. CUSHMAN:

Q. You did not memorize any story before you went to the county solicitor's office, did you?

A. There was no need to. They just asked me questions, and I was to say "No."

Q. Everything that was asked you, you just said "No"?

A. I don't remember just what was said there.

Q. Let's see if you said this: (Reading)

"Q. State what you saw—first, did you have occasion on March 18, 1947, to be at the Seventeenth Avenue yard of Linsley Lumber Company?

"A. Yes, sir."

Do you remember that question and answer?

A. If they asked that, I probably said "Yes."

"Q. What did you see there?

526 "A. Well, firstly I asked about this here man.

"Q. Who?

"A. Chester Robinson. I saw that he was a salesman and he had such a dirty collar on his coat. It was, I would say, a light coat and it appeared funny to me that a salesman would have such an unkempt coat, and he acted a little wishy-washy so I thought, well, I'm here at the yard waiting for some windows to be loaded; I'd watch him. A customer came in and made a greeting with him. I didn't hear the greeting but they shook hands, palsy-walsy like, and this little car drove in there. This was a little black one; I would take it to be a coupe, and he went back there and started loading some lumber on there."

You gave that answer didn't you?

A. I don't remember.

Q. You don't remember.

A. I don't remember.

Q. Did somebody make that up for you, if you gave that answer?

A. If the county solicitor's office said I said that, I believe the county solicitor's office. I didn't notice that, but I was under threat. But the Chief told me that Robinson was putting in a complaint, but they said they had it fixed up that the doctor—

Mr. CUSHMAN: The witness is trying to make
527 voluntary statements, and I ask the jury to be instructed to disregard it.

The COURT: Over-ruled.

By Mr. CUSHMAN:

Q. Did you make up any statements about Robinson when you were testifying?

A. I talked to the Chief.

Q. Did you make up any story that you were going to tell about Robinson?

A. The Chief told me about Robinson.

Q. Did you make up any story?

A. No, sir. He told me that Robinson was the man that was putting in the big complaint. And he says to make it sound real good. He says, "Have you got it?" And I said, "Yes, sir."

Q. What was there in the statement I just read to you that was untrue? Anything?

A. His clothes weren't, I wouldn't say, of a $200 a week salesman or anythink like that. His clothing was a little unkept.

Q. What was wrong with the statement I read you? Anything?

A. He was a little wishy-washy, but that may be his nature.

Q. I said, was there anything untrue in the state-
528 ment: "I saw that he was a salesman and he had such a dirty collar on his coat. It was, I would say, a light coat and it appeared funny to me that a salesman would have such an unkept coat, and he acted a little wishy-washy, so I thought, well, I'm here at the yard waiting for some windows to be loaded: I'd watch him. A customer came in and made a greeting with him. I didn't hear the greeting but they shook hands, palsy-walsy like, and this little car drove in there. This was a little black one; I would take it to be a coupe, and he went back there and started loading some lumber on there."

Is there anything in that statement that isn't true?

A. That is true up to that point, sir.

Q. You didn't have to make that up, did you?

A. That is the truth.

"Q. That is, Mr. Robinson did?

"A. Yes, sir".

Q. That is right, isn't it?

A. You are trying to scare me. Would you speak a little softer? I want to answer this as truthfully as I can.

Q. The question was: "Q. That is, Mr. Robinson did?" And your answer was: "A. Yes, sir."

Q. Whatever took place up there about Mr. Robinson, I denied that he was beaten. That was my prime objective to go up there.

"Q. He personally handled the lumber?

529 "A. Yes."

A. That was true.

"Q. All right. Can you describe the lumber?" And your answer:

"A. Well, to the best of my ability, I don't want to lie about anything, I would say that they were 2 x 4's, and some molding and what they got in the back I don't know. I followed them around and they had the back of the car backed up against there and of course I would almost have to walk around there to see, and then of course I would be suspected. Then he pulled out there all the way."

That was true wasn't it?

A. He loaded this in that shack. I didn't know what it was.

Q. Did you hear the statement I read?

A. Yes, sir.

Q. Was it true?

A. If the County Solicitor's office said it was true, I don't contradict them.

Q. Were you telling the truth when you made that statement?

A. Yes.

Q. Do you remember this question and answer:

"Q. Who did?

"A. This here man, the customer so he could be

530 clear to drive out, and I kept waiting for Mr. Robinson to go in the office or to get a slip or something like that or the customer as well, but neither one of them went in and after the man drove the car out, he got out and he handed some bills * * * I know money when I see it * * * rather quickly to Chester Robinson and he shoved it in there and closed his coat, and they started conversing about something and then the customer drove right on out. Well then I followed Mr. Robinson." You made that statement, didn't you?

A. I don't remember making it, but if the county solicitor's office says it is true, then it is true.

Q. Is that a true statement I just read to you?

A. Yes, sir.

Q. This is the rest of your answer:

"A. —I thought, giving the man every benefit of the doubt, that he would go in and deposit the money, but he had no intention of doing so. Well, anyway, he didn't go in. Another customer came in and hollered at him and I was following him to this other customer and they shook

hands and he started showing this other man lumber when a call came out from a truck driver and the man I was with was hard of hearing and I had to go because he asked me, so I had to leave and go."

A. I remember the call, yes, sir.

Q. I just asked you if you made the statement I read to you?

531 A. That is what happened, yes, sir.

Q. So if you told the county solicitor that, then it was the truth?

A. Events leading up just before we went over there, that statement was part of it. Part of this here was wrote up just before we went over there, because the Chief wanted some additional information to make sure he was a thief.

Q. I just asked you, please sir, if the statement I read to you, if you made it to the county solicitor, was it true or not true?

A. If the county solicitor's office said that statement was made, I say it is true.

Q. And you say now it is true?

A. Because I have respect for the county solicitor's office.

Q. You admit that it is true, don't you?

The Court: He is asking you if the facts which he just read you are true.

The Witness: Yes, sir, they are true.

By Mr. Cushman:

Q. This was the next question and answer:

"Q. You saw this customer then with a black car handing Mr. Robinson some good and lawful money of the U. S. of America?"

And you said:

532 "A. Yes. I know money when I see it."

Is that true?

A. That is right.

Q. You gave that answer and that was a true statement?

A. I don't remember the exact wording, sir.

Q. You went out to Sturniolo's house, did you not, with some others, when some lumber was recovered?

A. Yes, sir, I did.

Q. You had a list of it and you checked it off as you put it on the truck, did you not?

A. That is right.

Q. That was on the night of the 26th of March, was it not?

A. It was the first day we questioned Sturniolo.

Q. March 26, 1947, was it?

A. You just said 26, and now you say 27.

Q. I said 26, was it?

A. Yes, sir.

Mr. CUSHMAN: I have no further questions.

Further Cross Examination.

By Mr. FLOYD:

Q. Mr. Giroux, what was your practice in writing reports?

533 A. When I wrote a report at the conclusion of the job—I would take notes all day long, and at the conclusion of the day, I would come in the office and write out a report and sign my name to it.

Q. How do you mean you wrote out a report?

A. Just wrote what I had observed and seen and what had taken place.

Q. Did you do that on a typewriter or pencil or pen or how?

A. In pencil.

Q. From your original notes you had taken all during the day?

A. While we were writing out the reports, the Chief and his wife would pick up the reports, and say, "You had better make it a little better—you had better do better than that." He always said we didn't get enough.

Q. I hand you Defendant's Exhibit No. 7, which you have already identified as being a report dated March 27, 1947. What in there is not true or in accordance with your pencilled notes that you took that day? Look it over and tell me what in there is not true, or changed from your pencilled notes you took at the time you wrote that report?

A. (Reading): "Priest snivels and complains of all his tough breaks—

Q. What paragraph?

A. The second paragraph.

534 Q. (Reading): "Priest snivels and complains of all his tough breaks—"

A. (Reading): "—and declares himself to have no knowledge of any unethical procedure of handling building materials for Lindsley's."

That is true.

"Confronted with facts Chief presents, Priest threatens Chief and agents bodily harm by friends of his and tells Chief he has connections and curses at Chief and Agents whenever they ask questions that Priest claims damages his character."

Q. Was that in accordance with your notes?

A. I dictated as Chief Williams told me to write it down. Whatever he said to write down, and that sounds similar to what he told me to write down.

Q. How about the part on the second page about the K.K.K.?

A. (Reading): "Confronting Priest with findings, Priest states he lives with Mrs. Michalove at 2931 N. W. 39th Street. Chief, Agents and Mr. Yuhas questions Mrs. Machalove and she says Priest said he belonged to the Ku Klux Klan and threatened her life many times."

Q. Is that any different from what you wrote in the report?

A. I wrote that, but he told me to put it in there.

535 Q. You wrote it?

A. Just in pencil.

Q. You testified that the report had been changed, the wording. Is that true?

A. That is true. These reports are not in my wording. I write differently from that.

Q. I hand you a document and ask you if that is in your handwriting?

A. This is my handwriting all right.

Q. Is that the report you wrote up which was later typed for the report of March 28, 1947, by Agent No. 7?

A. This was wrote up in the office up there under directions.

Q. I want you to examine each of the documents closely—your original notes and the report that was later typed—and tell the jury whether there has been one word changed or that is different.

A. (Witness examines documents.)

Q. I want to know if there is any change between the typewritten report and your pencilled report you have just read?

A. The reading sounds similar, but that is not of my opinion there.

Q. There has been no change in it, has there?

A. I would write it and hand it to the Chief, and he

536 would say, "That is okay—write another sheet."

Q. When did you make this pencilled sheet?

A. It is dated there.

Q. On March 27, 1947, as it is dated?

A. That is right.

Q. I hand you Defendant's Exhibit No. 8, which is a confidential report, dated March 28, 1947, and ask when that report was made. When was it made, Mr. Giroux?

A. I don't remember the exact date of that one. They have got March 28.

Q. I hand you a document in handwriting and ask you if that is your handwriting.

A. Yes, but someone has wrote over this March 28 business. I believe that was made the following day, on the 29th.

Q. It is either March 28th or March 29, 1947?

A. Underneath it, you will see March 29.

Q. Then it was made either March 28 or March 29, 1947?

A. The following day, in the Chief's office.

Q. That is your handwriting?

A. My handwriting—I print.

Q. Are those the original hand printings from which were taken the typewritten report you hold in your hand, marked Defendant's Exhibit 8?

537 A. They have got this dated the 28th, and covered it is the 29th.

Q. Aside from that change, if there was a change, are they the only change?

A. I would have to read them.

Mr. Botts: If you tell me they are substantially the same, I will accept that.

Mr. Floyd: They are word for word, Mr. Botts, and the witness has testified they were changed.

(Defendant's Exhibits Nos. 17 and 18 received in evidence.)

Mr. Floyd: That is all.

Mr. Botts: If the Court please, my recollection is not clear on a certain fact. I don't think there is any dispute about it. Is it all right if I consult with counsel and get their impression?

The Court: Yes, but let's move along.

Re-direct Examination.

By Mr. Botts:

Q. Mr. Giroux, do you recall the occasions out there at the shack on the night of March 28th, when some of the

parties left and brought Mr. Robinson and Mr. Sturniolo back? Do you remember that circumstance?

A. Yes, sir.

Q. Were you in the party that went out and picked up Robinson and Sturniolo or did you stay in the shack?

538 A. I stayed at the shack, sir.

Q. In the confidential report dated March 28, Defendant's Exhibit 8, you wrote this statement (Reading): "Mr. Sturniolo was picked up at his home and the Chief took a knife out of his hand and brought him in with Agents."

Who told you to put that statement in your report?

A. The Chief. That is the reason I said that is not my opinion. I wrote down whatever he told me to write. I couldn't see the knife. He said, Write that down in the report." Whatever he wanted to write down, that is all I had to write down.

Q. And you weren't even out there?

A. I couldn't see it. I was at the shack?

Mr. Botts: That is all.

(Witness excused.)

John P. Sturniolo was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. Botts:

Q. Mr. Sturniolo, on the second occasion concerning which you have previously testified, when you were there in the shack and alleged you were physically abused, I will ask you whether or not you were cursed on those or either of those occasions?

539 A. Yes, sir, I was.

Q. What were the names that were applied to you sir?

Mr. Cushman: I request that the witness be required to state who made those statements.

By Mr. Botts:

Q. What names were you called?

A. I was called "a lying son-of-a-bitch."

Q. Do you know which one of the men present it was who used that term towards you?

A. Yes, sir.

Q. Who was it?

A. Mr. Williams.

Q. Was that term or terms of similar import applied to you on more than one questioning?

A. Yes, sir.

Q. Did that occur both nights or only one night?

A. I would say both nights, sir.

Q. Were any other derogatory terms applied to you, sir?

A. There was many obscene names used. I don't remember them all. That one term was used the most of all.

Q. What were some of the others, if you do recall any others that were used?

A. I was called "a bastard", and "a lying bastard", and "son-of-a-bitch", and "lying son-of-a-bitch."

Q. Do you recall anyone other than Williams who
540 applied those terms to you?

A. No, sir.

Q. Do you recall the night of the 28th, when you were picked up at your house? You recall that, do you?

A. Yes, sir.

Q. I will ask you whether or not you had a knife in your hand?

A. No, sir.

Q. Was a knife taken away from you?

A. I don't recall. It might have been. I have had a pocket knife on me on occasions on the truck. I might have had it in my pocket.

Q. Did you attempt to resist or use a pocket knife in any way out there?

A. No, sir. There was a gun in my back—I couldn't do anything.

Mr. Botts: That is all.

Mr. Cushman: No questions.

(Witness excused.)

Mr. Botts: If the Court please, we haven't had a morning recess, and since they rested, I haven't had a chance to talk to these witnesses in rebuttal. May I now have a ten-minute recess or so, to confer with the witnesses to see whether I want to call them further.

The Court: The court takes a ten-minute recess.

(Recess.)

541 AFTER RECESS.

Mr. BOTTS: I would like to recall Mr. Purnell.

FRANK J. PURNELL, JR. was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. BOTTS:

Q. Mr. Purnell, I don't think I asked you in your original examination—were any offensive names applied to you while you were in the shack on the night of the 28th? Were you cursed or vilified by words?

A. Yes, sir.

Q. What names were applied to you?

A. I was called a "son-of-a-bitch", and "damned liar".

Q. Who used those terms to you?

A. Mr. Williams, most of the time.

Q. I want you, if you can, to be sure whether or not he was the only one or not. If you can be sure, be as sure as you can.

A. I was interrupted so many times, it is just hard to tell exactly who did. But I remember him on several occasions.

Q. And you do not remember anyone else?

A. No, sir.

Q. Did you confess to stealing that night?

A. I wrote out a statement.

Q. I will ask you particularly if you put in that statement that you had stolen a few boards to fix a sink?

542 A. I can't remember exactly what I wrote in that statement.

Q. I ask you if you did steal any boards to fix a sink?

A. No, sir.

Q. Did you take any boards home from the Lindsley Lumber Company to fix a sink?

A. No, sir.

Q. Or to build a platform or any enclosure around the sink?

A. No, sir.

Q. With reference to the time when you entered the shack, you have fixed it as approximately four o'clock. I will ask you if you are sure whether or not Mr. Bombaci was present when the questioning started.

A. Yes, sir, he was.

Q. I will ask you whether or not Mr. Ford was there when the questioning started.

A. When I walked in the shack, there was five men there, and Ford was there immediately afterwards. I assume he was there when I walked in.

Q. I will ask you how positive you are as to the time. Could that have been—the time when you saw Mr. Ford there—could that have been as late as half past five or quarter to six?

543 A. No, sir.

Mr. Botts: That is all.

(Witness excused.)

Mrs. Frank J. Purnell, Jr. was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. Botts:

Q. Mrs. Purnell, at any time while Mr. Purnell was employed by the Lindsley Lumber Company, did he bring home any boards or lumber with which to fix a sink or which were used to fix a sink at your home?

A. He did not.

Mr. Botts: That is all.

(Witness excused.)

Chester M. Robinson was recalled as a witness and testified further as follows:

Direct Examination.

By Mr. Botts:

Q. Mr. Robinson, you have previously testified to cursing and vilification while you were in the shack. I will ask you if you can identify any particular person who did the cursing?

A. There were only two that I remember cursing me.

Q. Who were those?

A. Chief Williams and Bombaci.

Q. Did Chief Williams curse you on more than one

544 occasion?

A. He very seldom asked me a question but what he started out with "Mr. Son-of-a-bitch." That was his usual way of asking a question.

Q. Did Mr. Bombaci curse you on more than one occasion?

A. Not that I remember.

Q. I want you to identify, if you can, the particular time when you say Mr. Bombaci cursed you.

A. The only time I remember was when I was on the floor, and he kicked me and he called me a "wise son-of-a-bitch", and told me to get up in the chair. He told me to get up, and Williams was standing on my left foot, and I couldn't get up and Bombaci kicked me.

Q. Where?

A. In the side. And I asked him if he wouldn't kick me in the right side, please, because I had been operated on for appendicitis. And he asked me where, and I showed him and he kicked me, and said, "Wise son-of-a-bitch, get up in the chair." And I got up.

Q. Did you ever at any time sell material or goods from the place of business of the Lindsley Lumber Company without turning the case in to the office?

A. Never.

Q. Did you ever specifically sell goods to various
545 people at 50% of their value and collect the 50% and put it in your pocket?

A. Never.

Q. I will ask you if you ever at any time collected money from a customer and put the money in your pocket and kept it without turning it in to the office?

A. Never.

Q. How far from the place where you made sales was it to the office, or if you were varying distances, indicate those distances.

A. The hardware side was seventy-five or eighty feet from the counter where we turned in the money and wrote up the tickets. The lumber was perhaps one hundred fifty feet. The cement and lime shed was one hundred fifty feet, or perhaps further from the counter.

Q. Did you carry a sales book around with you or where did you write up your tickets?

A. We wrote them up at the counter at the front.

Q. Did all salesman go to a common counter to write up their sales tickets?

A. That is right.

Q. Was there a cashier there to receive the money?

A. Yes, sir.

Q. I will ask you if you ever received money from a customer and put it in your coat pocket. By the way,
546 did you wear a coat while you were on sales duty?

A. Yes, sir.

Q. And put it into your coat pocket prior to turning it in to the office?

A. Not that I remember. It is possible, if I was very busy, it is possible that I dropped it in to my coat. Sometimes a customer would go to the cement shed and we would put a couple of bags of cement on his truck, and we would walk with the money and write up the ticket, and give him his change. I don't ever remember of dropping it in my pocket, but it is possible I did.

Q. Did you ever wait on a customer and receive money from him and then after receiving the money, he called for additional goods and you put the money in your pocket while you were waiting on him for the additional goods?

Mr. FLOYD: We object to this leading line of testimony.

The COURT: Over-ruled. Go ahead.

By Mr. BOTTS:

Q. Did you?

A. Not unless there were two in the party or two together that wanted two different items.

Q. Did you ever, or is it possible that you ever waited on two customers before going to the counter to write up your tickets?

A. For instance, if I was giving them the lime or-
547 der, or a cement order and coming—that is one hundred fifty feet at a busy time, and someone asked me for an item we had, we would walk together, and I have wrote up two tickets at the same time. All salesmen do that. It is customary, that they write up two or three tickets, if it is quick items.

Q. You have testified to the fact that after you had been in the shack, and you say you were beaten, you were sitting in an automobile out over towards the main office, I believe, and you saw the appearance of an arm moving inside the shack.

A. That is right.

Q. Let me ask you how far, in your best recollection, is it from the west side ~~of 17th~~ Avenue in a westerly direction to the front door of this shack?

A. Approximately one hundred fifty feet.

Q. Now then, do you recall whether along to the north of that, there is a line of aralia screening the adjacent yard from the Lindsley Lumber yard?

A. There is a hedge that runs right up against the building.

Q. That hedge is made of aralia?

A. Of what?

Q. Of aralia—that is a shrub.

A. It is a high hedge. I don't know what it is.

548 Q. How high is that hedge?

A. Two or three feet over my head.

Q. Between that building, the paint shack, and the large office building, is there a parking area or is there an area that is used for parking?

A. There is room enough to park against the office building.

Q. In relation to the shack, where was this automobile in which you were seated when you claim to have seen a silhouette or shadow of an arm moving through the window?

A. Near the rear of the office building.

Q. And approximately how far was the automobile in which you were seated from the window of the shack. If you will use the distance between you and me as an illustration, will you state whether it was further or nearer than the distance between you and me?

A. It was about one and a half times the distance between you and me.

Q. It is in evidence that the south side of the shack—there are four windows in that shack. Which one of the windows was it that you were looking at when you saw that silhouette?

A. I believe it was the second. It was either the first or second from the east from the front.

549 Q. When you were in the paint shack being questioned, did you see anyone turn a key in the lock in the front door or entrance door to the shack?

A. I never saw a key, no. Only when we were inside when they locked it and got inside, they pushed it to, like a Yale lock.

Q. Was there a spring lock on that?

A. The door was locked when you pushed it to.

Q. How was that accomplished? What kind of a lock was it?

A. Like a Yale lock. All those locks are spring locks.

Q. When you were inside, do you know whether or not that spring lock was operated so that the door was automatically locked by the springing of the lock?

A. Yes, sir.

Q. All right. Do you recall the morning after you were arrested, which would be the morning of the 29th, I believe, do you recall going to Capt. Barker's office?

A. Yes, sir.

Q. Now then, at about that time or shortly after I will ask you if you saw or spoke to the defendant Ford.

A. Yes, sir.

Q. At that time and in the vicinity of Capt. Barker's office, I will ask you if Mr. Ford made this statement in substance—

550 Mr. CUSHMAN: I object to counsel leading the witness.

The COURT: Over-ruled.

By Mr. BOTTS:

Q. This statement, in substance—"You know, Robinson, that I did not beat you. I did not like that a little bit, because when Williams started beating you, I would walk down to the other end of the shack."

Did he make that statement?

A. He absolutely did.

Mr. BOTTS: You may examine.

Cross Examination.

By Mr. ROBERTS:

Q. You were an inside salesman?

A. Yes, sir.

Q. What were the rules and regulations concerning money transactions after each sale?

A. To take it to the cashier.

Q. Were you not supposed to take the purchaser up in front to the cashier, write out a ticket there on the machine, and in the presence of the cashier, take the man's money or have the purchaser give the money to the cashier?

A. We never had any orders to that effect.

Q. You were supposed to give every person that

551 bought material there a ticket, were you not?

A. Absolutely.

Q. And you had to write that ticket up right in front of the cashier, did you not?

A. Yes, sir.

Q. They were orders, were they not?

A. Yes, sir.

Q. And the purchasers would always get a 2% discount for cash, did they not?

A. Yes, sir.

Q. And usually when you computed the amount of different materials they would get, you would write it on the machine and add it up, make your extensions, take your 2%, and then you would find out how much the amount was?

A. Yes, sir.

Q. And the purchaser was supposed to be right there with you in front of the cashier, is that correct?

A. Not necessarily. Many times all salesmen would put on material in the yard or in the cement shed or the lime shed, and they would drive their truck around and wait for their ticket and their change. Sometimes they would get out and sometimes we would take their ticket and the change to them. All salesmen did that—we had no orders.

Q. But immediately following each transaction, you were supposed to go to that cashier station and write your ticket and make the change, if any, is that correct?

552 The company did not tolerate a salesman's making a series of sales out in the yard somewhere, and then at the end of half an hour or some period of time, coming in and writing up several tickets?

A. No.

Q. After each sale, the ticket had to be written up?

A. It didn't have to be, but that was the custom. Many times all salesmen, if they were going with money and a bag of nails, and another one asked for a clothes line or another item and it was a quick sale, we were all on commission, and the more we sold the more we made, and we would take both customers and we would write up the two tickets.

Q. That is, if you made a sale one hundred feet away, and there was someone on your way to the cashier?

A. That is right.

Q. Did I understand your testimony that you may have put some money—that you don't deny that you may have put some money in your pocket on one occasion?

A. I don't ever remember. I said it was possible.

Q. Do you know whether or not that was within the rules and regulations that the salesman should put the money in his pocket or take it to the cashier? There were cashiers there, were there not?

553 A. Yes, sir.

Q. And you were supposed to go directly to the cashier. Do you know if you ever made a sale without making a ticket?

A. Never.

Mr. Roberts: That is all.

Re-direct Examination.

By Mr. Botts:

Q. Where did you keep your private funds? Did you keep them in your side coat pocket?

A. Not in my coat, no, sir.

Mr. Botts: That is all.

Re-cross Examination.

By Mr. FLOYD:

Q. You mentioned the location of the cement and lime shed in the yard. What was kept in that shack that you described as the cement and lime shack in March of 1947?

A. If we had it, there would be cement, lime, plaster, mortar mix and other—at that time there was very little cement, and very little mortar mix, and very little plaster.

Q. Do you know whether you had any cement in March of 1947?

A. I don't remember.

Q. You don't know?

A. No, sir.

554 By Mr. CUSHMAN:

Q. What time of the day was it you say you were over in the office of Capt. Barker on March 27th? What hour of the day?

A. It was after lunch. It was in the afternoon on Saturday.

Q. Shortly after twelve o'clock—is that what you mean?

A. That is right, sir.

Q. And how long were you there?

A. About half an hour, I would say.

Q. Which would make it perhaps one o'clock or one-thirty when you left there?

A. Approximately. I don't remember the exact hour.

Q. The early part of the afternoon, anyway?

A. Yes, sir.

Q. And when you left there, where did you go?

A. They took me back to my cell.

Q. How long did you stay there?

A. In my cell?

Q. Yes, sir.

A. Until Monday. Monday afternoon, approximately four o'clock.

Q. And then you were released?

A. Yes, sir.

555 Q. When was it that you went out to Jackson Memorial Hospital?

A. It was sometime Saturday. The first day after I was in jail.

Q. Before you had gone over to Capt. Barker's office?

A. That I don't remember. I don't remember which place they took me first.

Q. Do you remember that after you had gone to Capt. Barker's office in the early part of the afternoon, that you were taken back to the city jail and placed in the cell and you remained there the balance of the day?

A. I don't remember whether they took me to the hospital after I went to Barker's office or not. They both occurred Saturday afternoon.

Q. Did you make any answer to the questions you say Ford asked you?

A. No, sir.

Q. You made no answers?

A. No, sir.

Q. Who was present when that conversation was had?

A. With Ford?

Q. Yes.

A. There was no one present except Ford.

Q. Had someone brought you over to Capt. Barker's office from the jail?

556 A. A policeman was there.

Q. He was present also, was he not?

A. When I came out of Mr. Barker's office, Mr. Ford called me aside a few feet from the policeman and asked me if I needed cigarettes or anything and I said, "No." And the policeman took me on to the jail.

Mr. CUSHMAN: That is all.

Re-direct Examination.

By Mr. BOTTS:

Q. The record here shows you were taken to the Jackson Memorial Hospital on March 29 at 3:05 p. m. Having that record in your mind, would you be able to give any indication of whether or not your conversation with Ford was before or after you were taken to Jackson?

A. I would say it was before, because we didn't get back from the hospital until possibly four-thirty. On the way back, they picked up a couple of drunks, and I am sure it was before.

Mr. BOTTS: That is all.

(Witness excused.)

MARY PRIEST was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. BOTTS:

Q. Mrs. Priest, you have testified to the occasion on the night of March 27, 1947, when certain men came to

557 your house, whom you have previously identified. I will ask you whether or not on that occasion you said to them that Mr. Priest was living at that time with another woman?

A. No, I never said that.

Q. The night previous to that—that is, the night of March 26th, where did Mr. Priest spend the night?

A. The night before that, he was at home.

Q. And the night—two nights before that. That would be the night of the 24th and 25th, where did he spend the night?

A. At my son's house.

Q. Did you state to these officers on that night in substance or effect, that you were bitter or had enmity towards Mr. Priest?

A. No.

Q. Was that a fact?

A. We often had little arguments around home, but they don't amount to anything. It is just personal. We get kind of cross over nothing.

Q. Was that one of the occasions that he spent the night with his son?

A. He likes to be with them, too. They are grown—they are married.

Q. I will ask you if you are certain as to the manner in which you were clothed on that night which you have
558 previously testified to.

The Court: That, Mr. Botts, is repetition. She testified very positively as to her raiment on that occasion.

By Mr. Botts:

Q. I will ask you this. Is your recollection quite clear as to the persons who were present that night at your house? Just answer yes or no. Is your recollection clear?

A. Oh, yes.

Q. Will you repeat again the names of those persons whom you are certain were present?

Mr. Floyd: We object. She has testified to that.

The Court: Objection sustained.

Mr. Botts: That is all.

(Witness excused.)

HENRY W. PRIEST was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. BOTTS:

Q. Mr. Priest, you have previously testified as to being cursed on the night you were there. I will ask you if you can identify the actual individuals who did the cursing. Just state them by name.

A. Mr. Williams.

Q. Anyone else that you recall?

A. No, sir.

559 Q. That was the night of the 27th. At what place did you spend the night of the 26th?

A. At my home.

Q. Was that the place where your wife was living on the night of the 27th?

A. Yes, sir.

Q. Where did you spend the nights of the 24th and 25th?

A. At my son's house, up at the Gray Apartments on N.E. Miami Court.

Q. Were you in any trouble or difficulty with your wife on or about the 27th day of March?

A. We had a few words regarding some of our relatives, but they didn't amount to a whole lot. We wasn't separated at no time.

Q. On the occasion you have previously mentioned when you state you were beaten, was the name of the K.K.K. introduced into the interview?

A. Yes, sir, it sure was.

Q. And will you state how and under what circumstances?

Mr. CUSHMAN: I object to mere repetition.

The COURT: Didn't you testify all about that when you were on the stand before?

The WITNESS: Yes, sir, I believe I did.

The COURT: Sustain the objection. We will never

560 get through if you keep calling witnesses.

Mr. BOTTS: It is my recollection he did not mention the K.K.K. in his first testimony.

The COURT: He says he did.

Mr. BOTTS: Come down.

(Witness excused.)

TOBIAS MATTHEWS was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. BOTTS:

Q. On this morning at my request, did you visit the so-called paint shack at the place of the Lindsley Lumber Company on N.W. 17th Avenue?

A. I did.

Q. Did you obtain permission to examine and enter that structure?

A. I went to Mr. Lindsley's office and spoke to a gentleman there, and he endeavored to find some of the Lindsleys and was unable to do that. And I told him my purpose of being out there, and he contacted someone, and I went ahead out to the shack.

Q. Did they give you a key?

A. The shack is open.

Q. Did you examine the front of the shack to determine what kind of a lock arrangement or device, if any,
561 was there on that front door?

A. I did.

Mr. ROBERTS: We object to the condition of the premises as they exist today, because that was two years ago.

The COURT: Do you know anything about the conditions there on March, 1947?

The WITNESS: The outside appearance of the shack today looked the same as it did to me when I saw it at that period of time. I did not at that time examine the interior.

The COURT: I sustain the objection as to the interior.

Mr. BOTTS: Come down.

(Witness excused.)

A. R. LINDSLEY was recalled as a witness and testified further as follows:

Direct Examination.

By Mr. BOTTS:

Q. Mr. Lindsley, has there been any structural change on the inside of that paint shack since March of 1947?

A. I do not know, Mr. Botts. I haven't been in the shed since March, 1947.

Q. Do you know of any change that may have been made?

A. I do not know.

562 Q. Has the arrangements or size of the windows been changed?

A. Not to the best of my knowledge.

Q. Has the floor of the shack been raised or lowered?

A. I don't know, but I don't believe so, Mr. Botts.

Q. Do you know—to your knowledge, has any structural change been made in the floor or window arrangements or the front door of that shack since 1947?

A. Not to my knowledge.

Mr. Botts: That is all.

(Witness excused.)

Andrew Yuhas was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. Botts:

Q. Mr. Yuhas, you—

Mr. Roberts: I understand you are now making Mr. Yuhas the Government's witness?

Mr. Botts: You think wrong, if you think so.

The Court: It doesn't make any difference whose witness he is. He is supposed to tell the truth, whoever he is.

By Mr. Botts:

Q. You described that shack yesterday.

563 A. Yes, sir.

Q. When was the last time you have been in there?

A. I don't recall. Probably months ago. I don't remember exactly. I very rarely go into that shack.

Q. To your knowledge, has there been any structural change in the location or elevation of the floor or the structural position of the windows or walls of that shack or the front door of that shack since March of 1947?

A. I wouldn't know.

Q. I say, to your knowledge?

A. No, sir.

(Witness excused.)

Tobias Matthews was recalled as a witness, and testified further as follows:

Direct Examination.

By Mr. Botts:

Q. This morning did you take any measurements to determine the height of the window level of the windows on the south side of that shack?

A. I did.

Q. From the outside—to the window sill on the outside.

A. I did.

Q. Did you take similar measurements on the inside from the floor up to the window sill?

564 A. I did.

Q. What was the distance from the ground up to the window sill on the outside?

A. From the ground to the window sill on the outside, sixty-one inches.

Q. On the inside from the floor up to the window sill, what was the distance?

A. Forty-eight inches. That is, you are referring to the window ledge, the bottom of the window?

Q. Yes. Do you know what kind of lock the front door is equipped with?

A. The front door presently has an old-type door lock that fits inside with the two white agate knobs, but also placed on the door is a Yale lock of the large type. From the inside you use a key to open it, and on the inside it will catch as you slam the door. Those are the only two locks I observed.

Mr. Botts: That is all.

Cross Examination.

By Mr. Roberts:

Q. Do you know whether or not there has been any change in the level of the lot between March, 1947, and today when you visited the premises; the grade—any fill which has made the windows now closer to the ground than what they were two years ago?

A. No, I do not.

565 Q. Did you see signs that the elevation or grade of the lot had been raised by putting in a quantity of fill there recently?

A. It is all paved.

Q. Did you see it two years ago?

A. I saw it from the street.

Q. Was it paved two years ago?

A. I do not believe it was. I do not believe it was paved at that time. I am not sure.

Q. And when they paved it, they have raised the elevation, have they not?

A. I wouldn't know.

Mr. ROBERTS: Thank you.
(Witness excused.)
Mr. BOTTS: The Government rests.
The COURT: Any surrebuttal?
Mr. CUSHMAN: No, sir.
The COURT: Gentlemen of the jury, you are excused until one o'clock.

*Renewal of Motions for Directed Verdict*

Mr. CUSHMAN: If your Honor please, at the close of all the testimony, and evidence, the Government and the defense both having rested, the defendants, separately and severally including Charles R. Ford, renew their motion for the Court to direct an acquittal in their favor as to
566 each and every count of the indictment, separately and severally, upon the following grounds:

(1) There is no testimony or evidence upon which the jury could lawfully find any one of the defendants guilty upon any count of the indictment.

(2) There is no evidence sufficient to prove the existence of a conspiracy as charged in Counts one, three, five and seven of the indictment, and no evidence to prove that the defendants were a party to any such conspiracy.

(3) There is no evidence to prove that the defendants, Charles R. Ford or any of the other defendants, wilfully, under color of law subjected, or caused any of the persons named in counts two, four, six and eight to deprivation of any civil rights in violation of Sec. 52 Title 18, U. S. C. A.

Wherefore said defendants move the Court to direct the jury to return a verdict finding them not guilty.

The COURT: I understand that is made on behalf of all defendants. The motions are over-ruled, and exceptions may be noted.

*Renewal of Corporate Defendant's Motion*

Mr. ROBERTS: I would like to ask that the additional motion that the alleged corporation made at the close of the Government's case be also included.

The COURT: Let it be noted that the corporate defendant's motion is renewed upon the grounds already stated by Mr. Cushman and upon all the grounds stated at the close of the Government's case. Let it be noted that
567 the motion is over-ruled and exceptions may be noted.

Mr. LETTS: There is one additional ground, and that is there is no evidence to sustain the Government's charge

that the defendant John S. Bombaci has ever attempted to operate as a special police officer of the City of Miami under the authority or direction of the Director of Public Safety.

The Court: The motion is over-ruled. Off the record.

(Discussion off the record.)

The Court: Adjourn court until one o'clock.

(Whereupon, at 11:45 o'clock, a. m., court was adjourned until 1 o'clock, p. m.)

568 *Reporter's Certificate to foregoing transcript omitted in printing.*

569 In the District Court of the United States
For the Southern District of Florida
Miami Division

United States of America
v.
Jay G. Williams, *et al.*

7279-M-Cr.

Jury Charge

Miami, Florida
January 21, 1949

Before: Hon. A. D. Barksdale, U. S. District Judge.

Appearances:

Fred A. Botts, Assistant U. S. Attorney, for the Government.

Messrs. Ernest Roberts and Edwin Strictland, (Roberts, Holland and Strickland) for the Defendants Andrew Yuhas and Lindsley Lumber Company.

William Pruitt, for the Defendant Jay G. Williams.

Ned M. Letts, for the Defendant John S. Bombaci.

L. J. Cushman, for the Defendant Charles R. Ford.

Messrs. Robert L. Floyd and Edward F. Boardman, for the Defendant Joseph V. Perry.

570 *Jury Charge*

The Court: Gentlemen of the jury, we are now within sight of the end of the trial of the case of United States of America against Jay G. Williams, Joseph Perry, John S. Bombaci, Charles R. Ford, Andrew Yuhas, and the corporate defendant, as to which, for reasons which seemed

sufficient to me, I have permitted an amendment to the indictment as to the name of the corporate defendant, which was indicted as Lindsley Lumber Company, and the amendment has substituted Dania Supply Company, a corporation doing business as Lindsley Lumber Company. That change is not material to you in the consideration of the case.

You have heard the evidence in the case and the arguments of counsel, and there now only remains that. I discharge my duty of declaring the law to you, and then that you retire to your room and determine from the evidence which you have heard, what the facts are in the case and apply the law as I shall give it to you to those facts, and render a true and just verdict.

You have heard the matter of punishment mentioned once or twice by counsel and each time I have directed counsel not to argue that question. I don't mean to imply to you that Federal Statutes do not provide punishment. Of course they do. The point only was this. Under the Federal system, the jury is not concerned with punish-
571 ment. I don't know what the practice is in the state courts in Florida, but in Virginia the jury not only determines whether or not a man is guilty or innocent, but fixes his punishment. In this court, as in all Federal courts, that is different. The duty and obligation of determining what, if any, punishment should be imposed upon a person who has been charged guilty is solely the obligation and duty of the Judge. The question of what punishment a person might get, if any, should not concern you. That is not a part of your problem. You have one very important duty, but only one. And your duty is to determine whether these defendants, or any of them, are guilty or not guilty. And when you have done that, you have completely discharged your duties. If you should find any one or more guilty, then the burden is on me to determine what further action should be taken.

You have here the rather unusual situation of a corporation being a defendant. Ordinarily individuals are charged with offenses, and it is unusual that a corporation is. However, it is thoroughly legal to proceed criminally against a a corporation, and although unusual, it is not infrequently done. A corporation, as you know, acts only through its officers and agents, and in order for a corporation to be found responsible, the agent against whom the charge is made must be a responsible agent. For instance, a janitor

couldn't bind a corporation, or some inferior and irresponsible employee could not make the corporation re-
572 sponsible for his actions. And the acts of the agent must be within the general scope of his authority, the general scope of his employment. So, in consideration of this charge or these charges against the corporate defendant, you should determine whether or not the acts which are charged against this corporation were done generally within the scope of the authority of responsible agents or officers of the corporation. You have seen and heard here two of the officers or agents of the defendant corporation—Mr. Lindsley and Mr. Yuhas. You should determine first, whether or not what these gentlemen did would constitute a crime as I shall define it to you later, and further whether or not these gentlemen were such responsible officers of the company as to bind the company by what they did.

I charge you that you are the sole judges of the credibility of the witnesses and the weight to be given their evidence; and in determining this, you are entitled to take into consideration their bias, their feeling, their interest in the outcome of the case, if any such appears, their manner of testifying, their candor and frankness, and any other matters which you would ordinarily consider in judging of the weight to be given to the statements of persons with whom you come in contact.

Now, in the course of what I have to say to you, it is entirely likely that I may make some comments on the
573 evidence, as I have a right to do, but I want you to distinctly and definitely understand that whatever I may say about the evidence, whatever comments I may make, are expressions of my opinion, made in the effort to assist and guide you. Anything I may say about the evidence is not meant in any way to infringe upon your prerogative and sole duty of determining what the facts are from the evidence which you have heard.

Whether any one or more of the witnesses—Frank Purnell, Jr., Chester Robinson, Henry Priest, or John Sturniolo—were guilty of stealing merchandise, is not directly material at all to the issues in this case. Everyone is entitled to the protections and safeguards of the Constitution of the United States. You and I are entitled to those safeguards and protections, and so is every other person in this country. The basest criminal is entitled to his Constitutional rights. A man who has done murder may legal-

ly, and may possibly be hanged, but he is nevertheless entitled to his Constitutional rights to a fair trial and to be free from mistreatment and abuse. So the question on the direct issue in the case of whether or not these men were guilty of stealing is not directly material. It is material and may be considered by you on the question of their credibility. If you think any one or more of these men were guilty of stealing, you may consider that in your de-
574 termination of how much weight you will give to his evidence.

This indictment was returned in this Court sitting here in Miami on November 15, 1948. It contains eight counts, which may be briefly summarized as follows: Let me say to you that it is the odd numbered counts, One, Three, Five and Seven, which charge conspiracy. The even numbered, counts, Two, Four, Six and Eight, charge substantive offense. That is, direct action by individuals not based upon any agreement; or, as they call it in law, a conspiracy. The only difference between the four sets of counts, is that two counts—One and Two, Three and Four, Five and Six, Seven and Eight—each pair of counts relates to a different complaining witness. That is to say, Counts One and Two relate to the witness Purnell; Counts Three and Four relate to the witness Robinson; Five and Six to the witness Priest; and Seven and Eight to the witness Sturniolo. They are identical in every respect, except that they refer to a different complaining witness.

I will explain to you Counts One and Two, which are the Purnell counts, but that explanation, you see, will cover all the counts in the indictment.

Count One charges that Jay G. Williams, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew Yuhas and Dania Supply Company, doing business as Lindsley Lumber Company, conspired to injure, oppress, threaten and intimidate Frank J. Purnell, Jr., a citizen of the
575 United States and of the State of Florida, in the free exercise and enjoyment of the rights and privileges secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to wit, the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and

battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law, and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida, and that it was a part of the plan and purpose of the conspiracy that the defendants which I have named would arrest and detain and cause to be arrested and detained on or about the 28th day of March, 1947, the said Frank J. Purnell, Jr., and would cause the said Frank J. Purnell, Jr., to go to and into a certain building, the shack or shed of Lindsley Lumber Company on 17th Avenue in this city; and they would detain him there, and while so detaining him, they would then and there illegally strike, bruise, batter, beat, assault and torture him, in order illegally to coerce and force him to confess his guilt in connection with
576 thefts from Lindsley Lumber Company, and to coerce him to name and accuse others of such thefts.

Count Two is what we call a charge of a substantive offense. That is, the actual doing of something pursuant to the agreement to do it. It charges those same defendants, the first four of them as officers—either police officers or special deputy sheriffs or something of the sort—did willfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida, and of the municipality of Miami, Florida, and creating the office and position of special police officer of the municipality of Miami, Florida, subject and cause to be subjected, Frank J. Purnell, Jr., an inhabitant of the State of Florida, to deprivation of the rights, privileges and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, in that they beat him for the purpose of forcing him to make a confession and for the purpose of imposing illegal summary punishment upon him.

There are certain matters I should make clear to you. I want you to fully understand that these defendants here on trial are not here on trial for a violation of any law of the State of Florida for assault or for any other offense, that might be charged against them under the laws of Florida. Neither are they on trial here for assault
577 under any laws of the United States of America.

They are on trial here on the charge of depriving Purnell, Robinson, Priest and Sturniolo of certain rights and privileges and immunities secured and protected to them by the Constitution of the United States. The Fourteenth Amendment to the Constitution of the United States

provides that "no state shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction, the equal protection of the laws." This Constitutional provision also provides that Congress may pass appropriate legislation carrying into effect the provision of the Fourteenth Amendment which I have just read to you. After the adoption of the Fourteenth Amendment to the Constitution, many years ago, Congress passed certain laws designed to protect and enforce certain rights and privileges protected by the Constiution. It is under these statutes that the present prosecution has been instituted. These statutes are somewhat different in that they are designed to protect these Constitutional rights and privileges from being attacked and imperiled under different circumstances. However, the rights and privileges guaranteed by the Constitution, and sought to be protected by each statute, are the same.

These rights and privileges are not set out in detail in the two statutes. The statutes content themselves with describing them in general terms as "any right and
578 privilege secured—by the Constitution and laws of the United States," in one statute, and in slightly different words as "any rights, privileges or immunities secured or protected by the Constitution and laws of the United States," in the other. The pertinent portions of the two statutes are as follows: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States.", they shall be punished as stated in the act from which the above was quoted.

"Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects, or causes to be subjected, any inhabitant of any State, Territory or District to the deprivation of any rights, privileges or immunities secured or protected by the Constitution and laws of the United States.", shall be punished as stated in the act. In either case you are not concerned with the nature of the punishment. You are merely concerned with the question as to whether or not the defendants, or some of them are guilty of violating one or the other or both of these statutes.

It is not necessary for me to attempt to outline to you each and every one of the rights and privileges which are protected by either or both of these statutes. You are

concerned only with the rights and privileges, stated
579 in the indictment, the enjoyment and protection of which it is alleged was violated. These rights and privileges, as stated in the indictment are as follows: (1) "The right and privilege not to be deprived of liberty without due process of law." (2) "The right and privilege to be secure in his person while in the custody of the State of Florida." (3) "The right and privilege not to be subjected to punishment without due process of law." (4) "The right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State." (5) "The right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida."

I charge you that each of these rights and privileges are protected by constitutional provision, and are within the protection of the sections of the law which I have just read to you.

The constitutional provision, implemented by the statutes which I have just read to you, assures to every citizen of the United States the right and privilege not to be deprived of any of the constitutionally protected rights and privileges as a result of a conspiracy of two or more persons be they officers or not, and not to be deprived of
580 any of these rights and privileges by any person or persons acting under color of any law, statute, ordinance, regulation or custom of any state. Every person is thereby also made secure in the right not to be subject to punishment, beating or penalties other than those prescribed for every person alike. This includes the right to be tried on a charge upon which one may be arrested—to be brought by due process of law into a court of the state and, if found guilty, to be sentenced and punished in accordance with the laws of the state, and also the right and privilege to be secure in his person while in the custody of the State of Florida, and the right and privilege to be immune while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said state. All these rights were secured to Purnell, Robinson, Priest and Sturniolo, along with you and me, and everyone else by the Constitution of the United States, and the federal statute upon which this indictment is based fixes the penalties for any one who, under color of state authority, denies

to any one of us any of these rights, or in case two or more persons conspire to prevent any citizen from enjoying the same, and the guilt or innocence of the above named witnesses is not material, except as in your opinion it may have bearing on his credibility, as I have explained it to you.

581 I wish now to direct your attention particularly to Counts One, Three, Five and Seven. These counts are based upon Section 51, from which I have quoted. These counts are what is known as conspiracy counts. One person cannot commit this offense because a person cannot conspire with himself, and the statute in its very first words say that to be within the purview of the statute two or more persons must conspire. If there is no conspiracy there can be no offense under this section, or under those counts. It becomes important that you should understand clearly what is meant by conspiring or a conspiracy.

Perhaps I can make this clearer to you by explaining some things which are not required. It is not necessary in order for a conspiracy to exist that the parties thereto should meet and in a formal manner, either verbally or in writing, agree to do the prohibited acts. Such a formal agreement would, of course, constitute a conspiracy but such formality is not necessary.

All that is required in order for a conspiracy to exist is that the defendants should have acted in concert with an express or implied understanding to produce a desired result.

A conspiracy has been defined to be a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose or some purpose not
582 in itself criminal by criminal or unlawful means. It has also been defined as a partnership in criminal purposes.

No formal agreement between the parties is essential to the formation of a conspiracy for the agreement may be shown if there be concert of action, all the parties working together understandingly, with a single design for accomplishment of a common purpose.

A conspiracy may be proved by circumstantial as well as direct evidence.

It is not necessary to guilt that all parties should have participated from the beginning or at the inception of a conspiracy. One who joins a conspiracy by coming into and joining in the execution of the plan after it has been conceived and is in operation, becomes a party thereto and

assumes responsibility for all that has been done before he joins. And it is immaterial at what time a defendant joined a criminal conspiracy where it is shown that he joined with others in carrying out a common design.

Under Counts One, Three, Five and Seven, the conspiracy is the gist of the offense. If you find from the evidence that a conspiracy was formed as alleged in these counts, and you further find that its purposes were accomplished, in whole or in part, this latter fact would not add in any way to the offense. However, evidence, if any, of acts done in
583 furtherance of the objects of the conspiracy may be important in determining whether or not there was in fact a conspiracy.

It is not necessary for the proof of the conspiracy charged here that everyone involved should have been an enthusiastic supporter of any enterprise which these men engaged in. For instance, I might ask you to endorse my note, and you might think that I was very presumptuous upon short acquaintance and be very reluctant to comply with my request. But if you did, in fact, endorse it, then you entered into an agreement, even though you didn't want much to do it. So, the enthusiasm with which the enterprise was regarded is not an essential ingredient in this charge. There should be no conviction unless you are satisfied beyond a reasonable doubt that there was actually concerted action by understanding agreement.

Let's consider the even numbered counts. I want you to clearly understand that the statute upon which these counts of this prosecution were based was not intended to cover and does not cover personal and individual acts of a citizen in wrongfully depriving another citizen of the Constitutional rights guaranteed to him by the Fourteenth Amendment. The statute applies only to one who acts under guise or color of authority of state law and thus brings about the illegal deprivation of Constitutional rights. The statute was not designed to reach, and does not reach the personal individual acts of one person towards
584 another, when the act is not done under color of State law, even though the person committing the act is the holder of a public office. However, it is the law that any misuse of power possessed by virtue of State law, made possible only because the wrongdoer is clothed with authority of State law, is action taken under color of State law. It is important that you keep clearly in mind the legal distinction which I have just pointed out to you between the personal and individual acts of a citizen hold-

ing a public office and the illegal misuse of power possessed by virtue of his office, in determining the guilt or innocence of these defendants.

This brings us to the question of whether or not Purnell, Robinson, Priest and Sturniolo were taken into custody by the defendants and held by virtue of the authority vested in them as officers of the law. An officer of the law does not have the power to divest himself of his official authority in actions taken by him which on their face appear to be actions taken pursuant to his authority, but his official position does not deprive him of the right to act as an individual in personal altercations with others. However, his official position does not vest in him the power to engage in personal altercations with other citizens. It only vests in him the power to take persons into custody under a claim that such persons have violated some law. So, gen-
585 tlemen of the jury, in determining the guilt or innocence of the defendants here as to Counts Two, Four, Six and Eight, you must take into consideration the circumstances under which it is charged the defendants took these men into their custody and determine whether or not in so doing, and in doing what they did, the action taken by them was taken "under color of State law."

If you find from the evidence in this case that the defendants took these men into their custody under color of law by reason of the positions they, or some of them, held, then the court charges you that these men had the right to be tried upon any charges for which he had been arrested, in a regularly constituted court of justice having jurisdiction, and if found guilty, subjected to the usual pains and penalties applicable to all persons alike for the offense charged. The defendants had the right to question them, but of course they had no right to coerce, misuse or beat them in the effort to extort a confession from them.

The essential issue on this question is this. As I have previously indicated, the Federal Statute under which the defendants are here on trial under counts Two, Four, Six and Eight, has no application to a citizen who acts without color of law; that is, of his own personal volition for his own personal reasons. The act upon which these counts are based, applies only when and only to one who acts under the guise or pretense of authority of
586 law. This statute was not designed to reach private personal controversies between two people. So under these counts, if you find from the evidence that the

defendants were not acting under color of law, but solely in their individual capacities, because of personal animosity toward these men, then what they did constitute only a violation of the State law, which should be remedied in the State courts of Florida and is not a violation of any Federal law. But, as I said before, if these men were taken into custody by the defendants, or either of them, and held by defendants, under color of law, by reason of the positions held by the defendants, or some of them, then the ordeal to which the defendants are alleged to have subjected these men, if they did so subject them, constituted a violation of the Federal statute.

Your attention is further specifically called to the language of the statute upon which these counts are based, which provides that "whoever, under color of law," etc., does the act prohibited, shall be guilty of the offense defined in the statute. Now color of law means a mere semblance of legal right. So, color of law, as used in the statutes, does not necessarily mean the exercise of some specific legal authority vested in an officer of the law, but also semblance, appearance and pretense and implies, in the language of the statute, that the act to which it applies need not necessarily have the real characteristics of a legal act. Therefore, we do not have in this case any question as to whether the defendants, in taking these men into custody and holding them in custody, acted under authority of any law of Florida, but whether or not the taking of these men into custody was done under color of law of Florida, state, county or municipal, arising out of the official positions held by the defendants, or some of them.

587

That expression "color of law" does not mean that in your consideration of these counts, you should be bound by the question of whether every one of the defendants charged in these counts was a police officer. It is my recollection that under the evidence there is no proof that Bombaci was an officer, and certainly Yuhas was not any kind of an officer and of course the corporation was not an officer. But I wish to call your attention in that connection to what is known as the Federal "aiding and abetting" statute. You will note from the indictment that Yuhas and the corporation are indicted for aiding and abetting, but that really makes no difference in view of the statute which I am about to read to you, which is as follows: "Whoever directly commits any act constitut-

ing an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

I can't make it too emphatic to you, gentlemen,
538 that mere presence when a crime is committed is, of course, not sufficient to render one guilty as aider or abettor. The fact that a person is present when a crime is committed and no more is not sufficient to convict him. There must be something to show that the person present and so charged, in some way procured, or incited or encouraged, the act done by the actual perpetrator. But whether a person does in fact aid or abet another in the commission of a crime is a question for you to determine, from the circumstances of the case as well as the direct evidence.

In other words, gentlemen, if you are satisfied beyond a reasonable doubt that these men, Purnell and others, were taken into custody by people who were officers of the law acting under color of that authority, and the defendants who were not officers of the law, aided and abetted in any way in the commission of the acts which followed, then they would be guilty as principals, notwithstanding the fact that they had no official position themselves.

In these accounts, gentlemen, the following language appears—I don't mean the language appears in the count; it appears in the statute upon which the count is based. "Whoever, under color of any law, statute, ordinance, regulation or custom, wilfully subjects or causes to be subjected any individual to the deprivation of any rights,
privileges or immunities secured or protected to
589 him by the Constitution of the United States and the laws of the United States, shall be guilty, etc." Now, the word "willfully" appearing in this statute, has a meaning and a very distinct and definite meaning that you should consider.

The statute provides that the thing done must be done willfully. In law the use of the words, "Willful" and "Willfully" implies a conscious purpose to do wrong. Doing a thing knowingly and willfully implies not only a knowledge of the thing done, but a determination to do it with bad intent or with an evil purpose or motive. It is not sufficient that the defendants here had generally a bad purpose in doing the things they are alleged to have

done, or that they went too far because of an excess of zeal in their desire to obtain a confession from these men. In order to convict under these counts—Two, Four, Six and Eight—it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving these men of one or more of the Constitutional rights I have previously enumerated to you. I don't mean by that, gentlemen, that in order for you to convict these defendants or any of them, that you must believe that they were saying over and over to themselves, "These men are protected by the Fourteenth Amendment to the Constitution of the United States, which is implemented by Acts 51 and 52 of the Title 18, United States Code Annotated."

I don't mean that at all, and you know I don't,
590 but I mean that they must, in order for you to determine that they acted willfully, that they had generally in mind that these men had rights guaranteed to them by the basic laws of this country, and they were knowingly depriving them of these rights.

The law denies to anyone acting under color of law, statute, ordinance, regulation or custom the right to try a person by ordeal; that is, for the officer himself to inflict such punishment upon the person as he thinks the person should receive. Now in determining whether this requisite of willful intent was present in this case as to these counts, you gentlemen are entitled to consider all the attendant circumstances; the malice, if any, of the defendants toward these men; the weapon used in the assault, if any; and the character and duration of the investigation, if any, of the assault, if any, and the time and manner in which it was carried out. All these facts and circumstances may be taken into consideration from the evidence that has been submitted for the purpose of determining whether the acts of the defendants were willful and for the deliberate and willful purpose of depriving these men of their Constitutional rights to be tried by a jury just like everyone else.

The use of the word "willfully" in the statute makes "intent" a material element of the offenses charged in
this case. Now, "intent" is something that exists
591 in a man's mind. It is impossible for you to enter into a man's mind or into the mind of defendants to determine the intent with which they acted. Therefore, their intent has to be judged by their intelligence, as shown

by the evidence; by their experience in life, as shown in the evidence, and generally by judging them as reasonably prudent persons, experiences in the affairs of everyday life, judge each other, and it is the law that a person intends the usual consequences of his acts.

Neither color of law nor specific intent may be presumed by you gentlemen of the jury, but both color of law and specific intent must be proven by the government beyond a reasonable doubt. But you gentlemen should take into consideration all the circumstances of the case in determining those issues.

To summarize as to these counts, you should determine the question of whether the defendants, or any one or more of them, took Purnell, Robinson, Priest, or Sturniolo, or all of them, into custody under color of law and did the defendants have and hold them in custody under color of law? Did the defendants specifically intend to deprive these men of a Constitutional right guaranteed to them by our Federal Constitution as set forth in the indictment. And has the government established these two essentials to your satisfaction beyond a rea-
592 sonable doubt as to any one or more of the defendants named in Counts Two, Four, Six and Eight?

Gentlemen, the law presumes that these defendants, as well as any other person charged with a crime, are innocent until, by competent evidence, they have been proven to be guilty. The indictment raises no presumption of guilt. To the benefit of this presumption of innocence, the defendants are entitled throughout their trial and it stands as their sufficient protection until it has been removed in your opinion by evidence proving guilty beyond a reasonable doubt.

The burden of proof rests upon the United States to prove beyond a reasonable doubt the guilt of the defendants before they can be found guilty, and there must be proved all the elements necessary to constitute the offense charged.

It is not sufficient that the defendants, upon speculative theory or conjecture may be guilty; or that, by the preponderance of the testimony, their guilt is more probable than their innocence; for until their guilt has been proved beyond a reasonable doubt, and as charged in the indictment, the presumption of innocence still prevails.

Reasonable doubt, however, does not import a mere possible doubt, because everything relating to human

affairs and depending on oral evidence is open to
593 some possible or imaginary doubt. A reasonable doubt exists, if, after the entire comparison and consideration of all the evidence, your minds are left in such a condition that you cannot say you feel an abiding conviction of the truth of the charge. A reasonable doubt is not a strained conjecture, but an actual, sincere mental hesitation caused by either insufficient or unsatisfactory evidence.

You have heard testimony as to the general reputation of the defendants, Ford and Perry, as to their being peaceable, honest, law-abiding and truthful citizens. You are to take such testimony into consideration and weigh it with all the other testimony introduced in their case. If, after so doing, there is a doubt in your mind as to the guilt of these defendants, and you believe the evidence as to their general reputation, and such evidence engenders in your mind a reasonable doubt as to their guilt, it would be your duty to return a verdict of not guilty, as to them.

Gentlemen, I have done a whole lot of talking and counsel have done some, but I think I can summarize to you quite briefly what the issues are before you, and that you will conclude when you go to consider the case, that the situation is not as complicated as possibly it has appeared by so much verbiage.

These complaining witnesses, Purnell, Priest, Robin-
son and Sturniolo, have testified to you that cer-
594 tain of these defendants took them into custody and took them into that shack and beat them. That testimony, has in some respects in each instance, been derogatory.

The defendants, on the other hand, have told you that although some of them took them into this shack or invited them in and questioned them, that Purnell and others came in voluntarily, and there was nothing that took place there except an investigation.

That is the first issue for your determination. That is, Purnell, Robinson and the other two, testified that other things happened besides the beating; that they were handcuffed, and they were restrained of their liberty, etc. But the beating is really the gist of their testimony. Each of them has told you in detail that he was beaten, and unmercifully beaten. I express no opinion on it, except my recommendation to you is this:

First, determine whether or not such beatings did take place. If they didn't, if these men were not deprived of their rights, if it was simply a volunteer appearance by them and an interrogation by the defendants, or some of them, then you should find them all not guilty. However, if you are satisfied beyond a reasonable doubt as to any of these defendants and as to any of these witnesses whom I have named, that they were beaten, then you should go further and consider the case further. If you are
595 satisfied beyond a reasonable doubt as to any of these witnesses, that they were beaten as they testified, then you should then take up the question of the conspiracy, that is charged in the odd numbered counts. You should determine if the men were beaten pursuant to and in connection with an agreement entered into by defendants and if so, which defendants. As to theose whom you should conclude were partners in the agreement, of course you should find them guilty. Of course if you should find—even if you believe they were beaten—if you should find there was no general understanding or concerted action, they would not be guilty of a conspiracy.

Assuming now—I am most careful to say to you, gentlemen, I am not in any way telling you or suggesting that you should conclude that these men were beaten—but if you do, then as I say, you should first determine whether or not the beatings took place in the course of an agreement entered into between two or more persons and decided which persons were so involved.

Then you should consider the matter of the odd numbered counts, which are the charges of substantive offenses. No agreement involved in that at all—it is, did they do it, or didn't they do it. You have got two more things to consider when you get to the even numbered counts. Assuming that—but again warning you that I am not telling you to do so—if you have concluded that
596 the men were beaten, then you have two more things to consider. Were they taken into custody, were they taken into this place and were they handled after they got there, under color of law? I hope I have explained to you what the color of law is. It does not mean that the things that happened there were in accordance with law. It means did these defendants or any of them take them into custody and do what they did to them pursuant to and in semblance of authority. By reason of the fact that they were officers, did they do what they did do.

In addition to that, there is the question of whether or not they did what they did willfully. Did they know what they were doing, and did they mean to do just what they did and deprive these men of their Constitutional rights?

Gentlemen, I think I have made the law clear to you and I will ask you to return to your room, but do not begin your consideration of your verdict until I direct you to.

(Jury retires.)

The COURT: Will you state the objections and exceptions for the Government?

Mr. BOTTS: The Government has none. I think your Honor has added to a charge approved by the Court of Appeals and has added much to the law in this matter. I think you have made a much better charge than the one that was approved by the Court of Appeals.

597 The COURT: Thank you. Objections and exceptions for the defendants?

Mr. ROBERTS: Mr. Strickland and I would like to be included in Mr. Botts' compliment to the Court. I think you were fair and just in your charge.

Mr. CUSHMAN: If your Honor please, on behalf of the Defendant Ford, I would like to renew the request that the Court give the written charges which we have requested in the language in which we have made the requests, and ask that the written charges that we have submitted be included as a part of the record of this cause. And I have written out five paragraphs which embody the same propositions. Perhaps I should read them to you.

The COURT: I don't think there is any need to read them. I will note on all requests "Declined as Requested," and that will be filed.

Mr. CUSHMAN: It will be understood that I wish that the Court charge further and embody either the precise words or the substance of the language of the requests?

The COURT: Yes, sir.

Mr. PRUITT: No exception on the part of the Defendant Williams to the charge as given, but we request to except to the refusal of the Court to give the charge as requested.

Mr. LETTS: I submit the same request that Mr.

598 Pruitt just made.

Mr. FLOYD: Defendant Perry joins in that request.

The COURT: Bring the jury in.

(Jury returns to court room.)

The COURT: Gentlemen, it has been suggested to me that when I told you that mere presence at the scene of a crime

did not render one guilty, that I confined that to some of the defendants—probably Mr. Yuhas and the corporation. I don't think an inference could be drawn from what I told you. I meant what I said about that—that anybody simply being present, and that alone, does not constitute a person as an aider or abettor. I think I have already made it clear to you that if a person is present and aids and abets and encourages and in any way assists them, he is guilty of the crime.

Gentlemen, I will ask you to retire to your room and consider your verdict. And if during your considerations, any question of law should come up about which you are not clear, I hope you will not hesitate to come back and ask for a further charge, or if there is anything about the actual rendering of the verdict which is not entirely clear to you, do not hesitate to come back.

(Jury retires.)

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599 AFTERNOON SESSION

(Whereupon, at 2:45 o'clock, p. m., further instructions to the jury were as follows:)

The MARSHAL: Your Honor, the jury requests further instructions.

The COURT: Bring them in.

(Jury returns to court room.)

*Further instructions to jury*

The COURT: Gentlemen, the Marshal informs me that you desire further instructions. What is it specifically?

FOREMAN OF THE JURY: In this indictment, it states innumerable sections of the law have been violated. Would the violation of—the deprivation of Constitutional liberty, for example, bear the same punishment as a beating?

The COURT: Suppose you sit down and I will undertake to answer that. The sections—the Code sections involved here—are Sections 51 and 52. Section 51 provides that if two or more persons conspire to deprive any person of his civil rights, they shall be guilty of an offense and punished as provided by the statute.

The other section, 52, is the one upon which the even numbered counts are based, and provides if any persons under color of law, so acting as officers, deprive a person of his civil rights, they shall be punished as provided in the statute.

It doesn't make any difference at all as to what
600 right the person has been deprived of. The violation is the same. In other words, if, as provided in either of those statutes, I am deprived of my liberty by being forcibly, or by coercion, restrained and held some way, that would be a violation; or if someone having me in custody beat me, that would be a violation. They are both violations of the same statute; precisely the same legal effect, insofar as a violation of the statute is concerned.

The punishment provided is the same for any or all violations of either statute. Do I make that clear to you? The statute does not say if anyone deprives a person of his Constitutional rights, by beating him, he shall be punished "thus and so." If anyone deprives another of his Constitutional rights by imprisoning him, depriving him of his liberties, the punishment shall be thus and so. It is all embraced in one statute.

I think I should go a little further and say to you, as I undertook to tell you this morning, that you should not be concerned with—in your decision of this case, you should not be concerned with the question of punishment. I realize to some extent how a man's mind works. You have heard this case, you are interested in all phases of it, and a man's mind isn't like some kind of electrical apparatus, where he can push one button for a certain thing, and another one or something else. I am quite sure you are interested
601 in what might be the final outcome, should you find these men guilty, but it is your duty to decide the question of whether they are guilty or innocent, and then the question of punishment is my responsibility and mine alone. Frankly and personally, I wish it weren't. I wish I could put that off on you, but I can't. The law gives you the question of determining whether persons accused of an offense are guilty or not guilty, and puts on me the duty of deciding what the punishment will be.

To be perfectly frank with you, I can't tell you what the punishment is under the statute, at the moment. As I say, I have been interested in the trial of this case, to determine the issue which you have before you; to find whether they are guilty or not guilty. If you find them guilty, then in due course of time, they will come before me for consideration of sentence, and I haven't actually looked at the statute to see what the penalties provided are. I wouldn't want you to think they aren't substantial. But as to that phase of this trial, I haven't looked at them because we shouldn't be concerned with that now. I will say

that I assume that as to these statutes, as in all Federal statutes, there is a great deal of discretion vested in the Court as to what punishment should be inflicted, if any.

Now, it has been suggested to me that possibly I have not fully answered your question and that maybe
602 you have in your mind that in order to find a verdict of guilty, you must be of the opinion that all of the civil rights enumerated in the indictment have been violated. If they have been deprived of any of the civil rights enumerated, that would be sufficient for a conviction.

Have I answered your question?

ONE OF THE JURORS: I think that one of the major points of the case at issue among the jury men is, if a person is present—which no doubt you remember as being brought out in this case—must that person be found guilty or not guilty, due to his presence in the room?

THE COURT: I think it would help you to know the exact language of the statute, and the exact language of the statute is this: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission, is a principal." Mere presence when a crime is committed is, of course, not sufficient to render one guilty as aider or abettor. There must be something to show that the person present and so charged, in some way procured, or incited, or encouraged, the act done by the actual perpetrator. But whether a person does in fact aid or abet another in the commission of a crime is a question for the jury, which may be determined by circumstances as well as by direct evidence.

603 I don't know if I gave you any examples or not. If you and I are walking down the street and we see some person coming along, and you say, "I am going to hold that person up," and possibly you yank out a gun and possibly do it. The fact that I am standing there and do not stop you would not make me guilty. But if I do anything—I don't have to grab him, I don't have to hit the person—but if I do anything to encourage it; if I should say, for instance, "Go ahead. I'll watch"—or—"Well, that's a good idea." If I do anything to aid, abet, encourage or counsel, that would make me guilty as a principal.

In a distilling case such as we have in the mountains of Virginia, one man may be a mile from the still, but if he is on top of the mountain as a lookout, and charged with the duty of firing his gun if he sees the "revenooers" coming, he is aiding and abetting. He is aiding, because he is

on the lookout. Of course, that isn't particularly a good example, because he is not present.

Gentlemen, that is about as well, I think, as I can put it to you.

ONE OF THE JURORS: The indictments drawn up in this case—that is strictly covering various phases of the law as it is written into the laws of the United States
604 Government, is that correct?

The COURT: That is right. Of course, any indictment is couched in somewhat technical language, and the Constitutional language. What I tried to do this morning was to explain to you in fairly plain and understandable language what the law was upon which this indictment was drawn.

ONE OF THE JURORS: We did understand your language quite thorough and completely. But the main discussion at point at this minute is—you see, this indictment covers a multitude of items, so to speak. And some of them in the indictment are not connected, more or less with the facts in the case, at all, and some of the jurors are of the opinion that practically any point in there, if it could be covered by any one of the individuals—I mean, if it could be applied to any one of the individuals in the case, there seems to be a doubt, not necessarily a doubt, but a question, in some of the jurors' minds as to whether or not we should convict or find innocent the person being tried there in question on that point. I think that indictment covers a dozen different points—maybe more than that. But as I say, those various points, there is a good many of
605 the defendants in here that are not guilty of any part of them, and even though the indictments are charged there generally. It is a quite a few of us of the impression that we shouldn't find a person guilty, even though the indictment is in there, if we did feel in our own mind that he is not guilty. And that is one of the principal reasons we asked to come in for further instructions on it—on those two points.

The COURT: The fact that someone is charged in the indictment is not conclusive on you. The indictment doesn't carry any presumption with it. What you should decide that on is—the indictment charges that these defendants conspired to deprive the witnesses of their Constitutional rights in that they did take them into custody; in that they did cause them to go into this house; in that they did beat them, and batter them, etc. It isn't necessary that all of those things took place. If they conspired to deprive them

of their civil rights in any of those particulars, that would constitute the offense. As to the substantive counts, if they actually did deprive them of their rights in that they did take them into custody and beat them or aided and abetted in it, then they should be convicted, if you
606 are satisfied beyond a reasonable doubt.

ONE OF THE JURORS: The mere presence of a man does not necessarily imply that he aided or abetted, does it?

The COURT: No, sir, it does not. The mere fact that a man was present is not sufficient to convict him. If a man was merely present where a crime was committed, you should not convict him. If he is present and in any way aided, abetted, encouraged, or gave counsel, then he would be guilty and should be convicted.

You may retire to your room, gentlemen.

(Jury retires.)

The COURT: I will hear exceptions and objections from the Government.

Mr. BOTTS: No objections.

*Defendants' objections to charge*

Mr. PRUITT: I would like to make this statement, if your Honor please. The impression I got was that perhaps it would have clarified the situation had your Honor gone further in answer to the statement or question propounded by the jury man in the rear there, by re-charging on the question of reasonable doubt. I think that his question was directed to that phase of the charge, and perhaps the explanation that your Honor gave to them on that was not as clear as it might have been.

The COURT: I can't agree with that. I will have to over-rule that, if that is an objection.

Mr. CUSHMAN: If your Honor please, it was my feeling that the Court should have charged the jury that it is
607 not necessary that they find any defendant guilty on all counts, or that they might find any defendant guilty of any single count. That was the impression I got.

The COURT: I am not sure I have told the jury that.

Mr. CUSHMAN: No, sir. I would like to have you state to the jury that aiding, concealing and procuring involves some affirmative intention, and some affirmative act on the part of the person as distinguished from mere passive presence.

The COURT: I over-rule that objection.

Mr. FLOYD: On the matter that Mr. Cushman directed to the Court's attention, I don't believe the jury comprehends—for instance, on the defendant Purnell, that they may eliminate all defendants on one person, and yet find two defendants guilty on Robinson's counts, and another two guilty—

The COURT: That is what I am going to try to do now. Bring in the jury.

(Jury returns to court room.)

*Further instructions to jury*

The COURT: Gentlemen, my attention has been called to one phase of the case which I do not think I made clear this morning, and I intended to. This indictment, as you know, contains eight counts, and each count charges
608 a separate offense. The fifth count indictment is made up of four pairs of counts. The first two counts relate to the witness Purnell. The second two counts relate to the witness Robinson; the third pair of counts relate to the witness Priest, and the Seventh and Eighth counts relate to the witness Sturniolo.

As to the conspiracy counts, One, Three, Five and Seven, you could not possibly convict one person, and only one, because for a conspiracy, it requires at least two persons to be guilty of a conspiracy, because the very word "conpiracy" contemplates the agreement of two persons. But as to those counts, you might convict any two people and acquit all the others. You might convict all of them, or you might convict any two or more. As to the even numbered counts, the substantive counts, you might, if you weren't satisfied of their guilt beyond a reasonable doubt, you might acquit all the defendants, or you might convict any one or more, or any number up to five.

ONE OF THE JURORS: Would it be in line for us to acquit or convict any one or any two and find, say any part of the defendants, and find those that we cannot agree on—could we find the mistreatment, could that be declared mistreatment, or would the whole thing have to be mistreatment?

The COURT: Without intimating to you at all how
609 I think you should find, I very much hope that you will reach a unanimous agreement as to anything you do. I would say if you can come to an agreement that would apply to any one count, as to any number of persons and disagree as to the others, that is within your

perview. As to any particular count, if you cannot agree at all, I don't see why you shouldn't say so. However, on a particular count, you should come to an agreement, either one way or another, as to two or three people, and you can't agree on the others, I don't see why you shouldn't report it.

I don't want you to hit this thing a "lick and a promise" and I know you are not. I think you gentlemen are as capable of deciding this case as any in the Southern District of Florida or the Western District of Virginia, and it is in the interest of justice that litigations should be brought to a close, and I don't want anyone to do violence to his conscience. But I do want you to respect and consider the opinions of others, and if it is possible, without doing any violence to your conscience, I hope you can bring in a unanimous verdict in all particulars. If you can't, I want you to bring in a verdict which reflects your conclusions.

You may retire, gentlemen.

(Jury retires.)

Mr. BOTTS: No objection.

*Defendants' further objections*

Mr. PRUITT: Just to preserve the record, if the Court please, on behalf of the Defendant Williams,
610 exception is taken to the last instructions given to the jury.

Mr. CUSHMAN: If your Honor please, the exception that I would like to note was it was my feeling when the Court was discussing the matter with the jury that the Court might have removed the impression that I am sure the Court left this morning when it charged the jury, and that was that the defendants or none of them are to be found guilty merely by proof of assault and battery without more; and that more is required than proof of assault and battery, and more is required than false imprisonment. I do think that from some of the questions of the jurors and the manner in which the Court answered them it might be well for the Court to instruct the jury that while the terms "beating" etc., have been used, it is understood that that is not all that is necessary to authorize a verdict of guilty against any defendant.

The COURT: I will have to over-rule that objection; an exception will be noted.

The court will again be in recess.

(Recess.)

The MARSHAL: Your Honor, the jury wants to report.
The COURT: Bring them in.
(Jury returns to court room.)
The COURT: Have seats, gentlemen. Have you a report to make, gentlemen?

*Further instructions to jury*

FOREMAN OF THE JURY: Your Honor, we are just
611 hopelessly dead-locked in this case. We have a one-sided vote on some of the issues—quite one-sided. But we are unable to reach a definite agreement, and I don't believe that there is a possibility of us reaching a just and fair verdict.

The COURT: Gentlemen, is there anything about the law of the case or any phase of it about which I could give you any further enlightenment?

ONE OF THE JURORS: There seems to be questions principally concerning Counts One, Three, Five and Seven, or conspiracy. There is no doubt on Counts, Two, Four, Six and Eight. I think that we could give decisions on all of the defendants on those beating counts, but we are unable to agree, and are hopelessly dead-locked on One, Three, Five and Seven.

The COURT: I think possibly you misunderstood me, when you were here before. I told you that I very much hoped that you would reach agreements on everything, but that if you could agree on some things, some counts and some people, you should do that and if you were absolutely unable to agree on certain other people and counts, you should so report.

If you can agree as to any defendants, as to any count, or more than one count, or counts, you should do so. And if you find it impossible to agree on any other count or counts or people, then you should so report. But if you can
agree on any defendants as to any count, then you
612 should do so. I have no disposition whatever, gentlemen, to coerce you in any way. You gentlemen are fully aware of the obligations imposed upon you, and I certainly have no disposition to keep you to any unreasonable time. But we have been practically this whole week trying this case, and I don't think we should declare it a mis-trial without making a very earnest effort to arrive at a just conclusion. And I want you to bear in mind what I have just said to you; that if there are any counts or any defendants about whom you can agree, I would like to have you make a finding, and I still hope you can agree

on everything. However, if you can't, I should like for you to report and render your conclusion, your verdict as to all you can agree upon—

One of the Jurors: Repeat that last sentence, please.

The Court: If you can agree upon any counts as to any defendants named therein, you should do so. If you find that you cannot agree upon any count as to any defendant, just report that. But so far as you can agree, then you should render a verdict reflecting that agreement.

One of the Jurors: Your Honor, the present dissension, as I told you before, was in Counts One, Three, Five and Seven.

The Court: That is the conspiracy?

Juror: Yes. We have reached an almost
613 unanimous decision on practically—well, on all of the even numbered counts on all of the defendants. But our dead-lock lies in the fact that we are unable to reach a decision on any of these counts with any of the defendants. Our mind is more or less settled and made up on the even counts, but there is some dissension on the odd counts.

The Court: That is what I am trying to get over to you. If you can agree on the even numbered counts, then you should render a verdict on it. And if you cannot agree on the odd numbered counts, then you should report yourselves disagreed on that.

As to the conspiracy counts, is there anything in the law of conspiracy about which you are in disagreement which I might possibly make any clearer to you?

One of the Jurors: Would it be permissible to ask you the question as to—if we had agreed on part of the defendants on the even numbered counts as not being guilty and then could we go back and implicated them in a conspiracy trial that they would be guilty of conspiracy. Could they be acquitted on even numbers and convicted on the conspiracy counts?

The Court: It would be possible. The odd numbered counts, the conspiracy counts, charge that these defendants agreed to do thus-and-so. The even numbered counts
charge that they did thus-and-so. It is conceivable
614 that a person might agree to do something and not do something.

The Juror: It seems to me if a person is guilty of conspiracy that they would be guilty of the other counts, and the conspiracy charge would be the first to consider and not consider the innocence or guilt in the other counts. If they

are not guilty in the other counts, how could they be guilty in the conspiracy other than what you just said—they could conspire to do it and yet not do it.

The COURT: That is right.

ONE OF THE JURORS: I would like to ask about that question on Two, Four, Six and Eight. The foreman says we are in agreement on that, but I wouldn't want to convey the impression that we have decided that those men are guilty or not guilty.

The COURT: I am not taking anything you say as a commitment, gentlemen, because when you render your verdict, the decision is yours. But what I am telling you is that because you cannot agree on everything, you should not come in and report a complete disagreement. If you can agree on any count as to any defendants, you should render your verdict on it. For example—understand I am not suggesting to you that you do anything—but say on Count Two. If you can agree that any number of defendants in regard to Count Two are guilty, you should so find, even though you may be in disagreement as to one or more of the de-
615 fendants. It would not vitiate your verdict if you should disagree on some or find a verdict on the others, and you can find some persons guilty and others not guilty under any count. Or you can find some guilty and disagree as to others, and you can find some guilty and disagree on others.

But I say to you, gentlemen, and I say to you very earnestly, that you should not report a disagreement because you can't agree on everything. You should find a verdict carrying out anything which you can all agree upon.

I am going to ask you to retire and consider it some more.

(Jury retires.)

The COURT: I will hear any exceptions which counsel wish to make.

Mr. BOTTS: No exceptions, your Honor.

Mr. CUSHMAN: I would like to suggest, if your Honor please, that after the jury said they were [illegible]pelessly deadlocked and could not reach an agreement, that the Court's charge, although I understand it was very guarded, in that respect, might be regarded as a request on the direction of the Court—on the Court's part—to find some verdict, notwithstanding their previously announced statement that they could not agree at all.

The COURT: An exception to that effect may be noted.

616 We will recess again.

(Recess.)

The MARSHAL: Your Honor, the jury is ready to report with their verdict.

The COURT: Bring them in.

(Jury returns to court room.)

The COURT: Have you agreed on a verdict, gentlemen?

FOREMAN OF THE JURY: Partially, yes, sir.

The COURT: Let me see it, please. I note you have found a verdict, gentlemen, as to Counts Two, Four, Six and Eight, and you report you are unable to agree on counts One, Three, Five and Seven. Do I understand you to mean by that that you are unable to agree as to any defendant on any of those counts?

FOREMAN OF THE JURY: Yes, sir.

The COURT: You have found as to those, neither a verdict of guilty or not guilty as to any one of those counts?

FOREMAN OF THE JURY: Yes, sir.

The COURT: Do any of you feel that further consideration would bring you to an agreement?

FOREMAN OF THE JURY: I don't think there is a chance, your Honor.

The COURT: Now understand, gentlemen, I am not being critical, but I just do know that it is to the advantage of everyone to bring things to a conclusion. If you are satisfied that further consideration is useless, I am not going to impose upon you further. But if any substantial number think further consideration might bring you to an agreement on those counts, I would like to have you consider it further. Does anyone think it would help?

617

(No response.)

The COURT: Nobody does. Any suggestions from counsel?

(No response.)

The COURT: It has been suggested to me that I inquire of you a little bit further as to the conspiracy counts. Of course, I told you in the beginning that you should not convict anyone, any one person on the conspiracy count. I think I told you that you could acquit everybody on the conspiracy counts, or you could convict two and acquit the rest. Was that clear to you?

FOREMAN OF THE JURY: Yes, sir.

The COURT: You understand that, but you just cannot agree on the conspiracy counts as to anybody?

FOREMAN OF THE JURY: That is correct.

The Court: I don't think I can do anymore, gentlemen, to bring about an agreement. If the gentlemen of the jury really disagree, that is their right.

618 Read the verdict.

(Whereupon, the verdict was read, and the trial of this case concluded at 6 o'clock, p. m.)

619 *Reporter's Certificate to foregoing transcript omitted in printing*

620 *Instructions Requested by Defendant, Williams*

Instructions requested by the defendant, Jay G. Williams, and refused by the Court, as follows:

At the conclusion of the Court's charge, defendant requests the Court to charge, in addition thereto, upon the matter specified in paragraph one (1) and substantially, or in the language set forth in paragraphs two (2), three (3), four (4) and five (5) hereof:

(1) In explaining count No. 1, the Court failed to point out that the defendants Williams, Perry and Bombaci were alleged to be special police officers, acting under written authority from the Director of Public Safety.

(2) Unless the defendants were wielding the power or authority of the State of Florida, or were acting in their capacities as officers of the State, there can be no offense, because an individual cannot deprive another person of privileges or immunities guaranteed by the 14th Amendment to the Constitution of the United States.

(3) Instruct that the conspiracy must have had as its object the intent to deprive the four men or some one of them of their civil rights as alleged in counts one-three-five and seven of the indictments. That a conspiracy to assault or batter, or to falsely imprison, would not be sufficient & the object must have been to deprive the four men, or some one of them of the particular constitutional rights or privileges specified in the indictment, and in order for any defendant to have been a member of any conspiracy, such defendant must have known of that object, and must have joined in efforts to accomplish that particular object. A conspiracy to assault or beat the four men or any one of them,

would not be a violation of Section 51 which I have
621 discussed with you, unless the assault or beating was done, or intended to be done for the specified purpose of depriving the four men or some one of them of their constitutional rights, and the existence of such a purpose cannot be assumed, merely because these men or some of them were beaten, if they were beaten.

(4) A person does not become a conspirator merely by being present when an act is committed, nor does a conspiracy exist merely because some act was committed while several persons were present & so, in this case, if any one of the four men, or all of them, were beaten, by one person, in the presence of some or all of the defendants, the mere presence of the defendants or some of them at the time any one was beaten would not make any of those present members of a conspiracy, or make a conspiracy to exist unless those who were present consciously and intentionally working together to accomplish the same purpose. There mere presence at the time and place would not alone create a conspiracy, nor make any of them members of a conspiracy or liable as conspirators.

(5) Under the Federal Statute I have read to you a person does not become liable criminally, for any act committed by another person unless such person was present aiding, counseling, procuring, and and encouraging the person committing the act to do what he was doing. Mere presence is not enough.

In United States District Court

*Designation of Contents of Record—Filed April 29, 1949*

The Appellant, JAY G. WILLIAMS, designates the following portions of the record, proceedings, and evidence, to be contained in the record on appeal in this action:

622 1. Copy in full indictment filed November 15, 1948.

2. Recite on December 31, 1948, Joseph V. Perry was arraigned and plead not guilty.

3. Recite on December 31, 1948, Charles R. Ford was arraigned and plead not guilty.

4. Recite on December 31, 1948, Andrew J. Yuhas was arraigned and plead not guilty.

5. Recite on December 31, 1948, Lindsley Lumber Co., a corporation, was arraigned and plead not guilty.

6. Recite on January 17, 1949 that Jay G. Williams was arraigned and plead not guilty to the indictment.

7. Recite on January 17, 1948 that John S. Bombaci was arraigned and plead not guilty to the indictment.

8. Recite on January 17, 1949, trial by jury.

9. Recite on January 18, 1949 that trial was resumed.

10. Recite on January 19, 1949 trial was resumed.

11. Copy in full motion by Government to amend the indictment filed January 19, 1949.

12. Copy in full docket entry dated January 19, 1949 that the motion to amend indictment was orally granted by the Court in open Court.

13. Recite on January 20, 1949, trial was resumed.

14. Recite on January 21, 1949, trial was resumed.

15. Recite on January 21, 1948, and copy in full, verdict of the jury, showing that Jay G. Williams was found guilty on Counts 2-4-6-8, and that Defendants, Joseph V. Perry, John S. Bombaci, Charles R. Ford, Andrew J. Yuhas and Dania Supply Co., doing business as Lindsley Lumber Co. were found not guilty on Counts 2-4-6-8; that a jury was unable to agree as to any defendants on Counts 1-3-5-7.

623 16. Copy in full motion for new trial, filed by Jay G. Williams January 24, 1949.

17. Copy in full judgment and commitment filed February 11, 1949.

18. Copy in full notice of appeal as to Jay G. Williams.

19. Recite the filing on February 21, 1949, election of Jay G. Williams to remain in Dade County jail.

20. Copy in full insolvency affidavit of Jay G. Williams filed March 3, 1949.

21. Copy in full motion for leave to proceeding *forma pauperis* filed March 3, 1949.

22. Recite the filing, and copy in full motion to extend time for filing record on appeal.

23. Recite the filing on March 4, 1949, notice of hearing.

24. Copy in full order filed March 9, 1949 extending time for filing record on appeal to May 14, 1949 in Circuit Court of Appeals.

25. Copy in full order filed March 9, 1949, permitting appeal in *Forma Pauperis*.

26. Copy in full all the proceedings and evidence at the trial, with all motions, rulings on motions and all charges given by the Court, all exceptions thereto and all the proceedings in the trail court.

27. Copy in full the instructions requested by the Defendant, Jay G. Williams, and refused by the Court.

28. Recite the filing, and copy in full this designation of contents of record.

29. Copy in full, statement of points on which Appellant intends to rely.

624 30. Transmit all the Exhibits, both of Government and the Defendant, in their original form to the Circuit Court of Appeals.

31. The proper certificate of the Clerk as to the correctness of the transcript and record on appeal.

A. C. DRESSLER
*Attorney for Appellant*
1030 Seybold Building
Miami, Florida

Service of the above and foregoing Designation of Contents of Record and receipt of copy thereof are hereby acknowledged this 29th day of April, 1949.

HERBERT S. PHILLIPS
*United States Attorney*
By: FRED BOTTS
*Asst. United States Attorney*

E.

In United States District Court

*Statement of Points on Which Appellant Intends to Reply—Filed April 29, 1949*

The Appellant, JAY G. WILLIAMS makes the following Statement of Points on which he intends to rely on his appeal herein:

1. The District Court erred in denying Appellant's motion for a new trial.

2. The District Court erred in denying the motion of Defendant, JAY G. WILLIAMS for judgment of acquittal at the close of the Government's case.

3. The District Court erred in denying the motion
625 of Defendant, JAY G. WILLIAMS for judgment of acquittal at the cloase of the entire case.

4. The District Court erred in refusing to give requested instruction to the jury of the Defendant, JAY G. WILLIAMS, numbered Four (4).

5. The indictment does not charge an offense cognizable under the laws of the United States.

6. That each of said counts under which the Defendant, JAY G. WILLIAMS was convicted, charges no more than an assault and battery, of which offense the District Court had no jurisdiction.

7. That the District Court erred in allowing the Government to amend the indictment herein, without sending it back to the Grand Jury, by allowing the amendment of said indictment near the close of the Government's case by changing the name of the Defendant, Lindsley Lumber Co.,

a corporation, to Dania Supply Co., a corporation, doing business as Lindsley Lumber Co.

A. C. DRESSLER
*Attorney for Appellant*
1030 Seybold Building
Miami, Florida

Service of the above and foregoing Statement of Points on which Appellant Intends to Rely and receipt of copy thereof are hereby acknowledged this 29th day of April, 1949.

HERBERT S. PHILLIPS
*United States Attorney*
By: FRED BOTTS
*Asst. United States Attorney*

E.

626 Clerk's Certificate to foregoing transcript omitted in printing.

627 In the
United States Court of Appeals
for the Fifth Circuit

No. 12711

JAY G. WILLIAMS,
versus
UNITED STATES OF AMERICA.

*Argument and Submission—October 20, 1949*

On this day this cause was called and after argument by A. C. Dressler, Esq., for appellant, and Fred Botts, Esq., Assistant United States Attorney, and Leo Meltzer, Esq., Special Assistant to the Attorney General, for appellee, was submitted to the Court.

628 In the
United States Court of Appeals
for the Fifth Circuit

No. 12711

JAY G. WILLIAMS, APPELLANT,
versus
UNITED STATES OF AMERICA, APPELLEE.

Appeal from the District Court of the United States for the Southern District of Florida.

Before HOLMES, WALLER, and SIBLEY,
Circuit Judges.

*Opinion of the Court—Filed January 10, 1950.*

WALLER, Circuit Judge: This case is another instance where in applying the third degree in an endeavor to unearth a crime a more reprehensible crime was thereby committed.

The Appellant, Williams, a private detective, was indicted, along with Perry, Bombaci, Ford, Yuhas, and
629 Lindsley Lumber Co., an alleged corporation, in four counts under Section 52, Title 18, U. S. C. (Section 20, U. S. Criminal Code), for willfully depriving four persons (Purnell, Robinson, Sturniolo, and Priest) of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, and also in four counts, under Section 51, Title 28, U. S. C. (Section 19, U. S. Criminal Code), for conspiring to injure, opress, or interfere with the same four individuals in the exercise of rights and privileges under the Constitution and laws of the United States. There was a mistrial of all of the Defendants under the four conspiracy counts under Section 51. There was a conviction of the Appellant, Williams, on each of the four counts charging the substantive offenses under Section 52, but the other Defendants were acquitted under those counts. Later there was a retrial of the four Defendants under a revised indictment on the conspiracy counts, which resulted in all four being convicted, from which an appeal was also taken to this Court. See *Williams, et al. v. U. S.*, opinion rendered this day, not yet officially reported, for more complete details of the facts common to both cases.

The appeal which we are here considering is by Williams from his conviction and sentence under the four sub-

stantive counts under Section 52 of Title 18.[1] The
630 indictment in the present case charged, in Count 2, that the Appellant, together with Defendants Perry and Bombaci, were special police officers under written authority from the City of Miami, Florida, and acting under the laws of the State and ordinances and regulations of the municipality, who with Charles R. Ford, a police officer of the City of Miami, acting under the laws of the State, together with Andrew J. Yuhas and the Lindsley Lumber Company, did willfully, and under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami, subject, and cause to be subjected, Frank J. Purnell, Jr., an inhabitant of the State of Florida, to deprivations of the rights, privileges, and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to wit,

> "the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 28th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said Frank J. Purnell, Jr., and brought and caused him to be brought to and into a certain building sometimes called a shack on the
631 premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami,

[1] Section 52 of Title 18, U. S. C., reads:

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both."

Florida, and did there detain the said Frank J. Purnell, Jr., and while he was so detained the defendants did then and there illegally strike, bruise, batter, beat, assault and torture the said Frank J. Purnell, Jr., in order illegally to coerce and force the said Frank J. Purnell, Jr., to make an admission and confession of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co., and in order illegally to coerce and force the said Frank J. Purnell, Jr., to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Frank J. Purnell, Jr."

The other three substantive counts involved in this appeal were identical except that in the other substantive counts 4, 6, and 8, Chester M. Robinson, Henry W. Priest, and John P. Sturniolo were successively and respectively named as the victims instead of Frank J. Purnell, Jr.

There is substantial evidence in this case to the effect that Williams, the owner and operator of a private detective agency in Miami, Florida, was employed by the Dania Supply Company, doing business as Lindsley Lumber Co., to investigate thefts from it of lumber and material. Williams had a special police card issued by the Director of Public Safety of the City of Miami. He received no compensation as such special police officer and his official status is not very definitely shown by this
632 record. Section 24 (a) of the charter of the City of Miami—which is more of a negation than a definition—provides:

"No person, except as otherwise provided by general law or this charter, shall act as special police or special detective except upon written authority from the director of public safety. Such authority, when conferred, shall be exercised only under the direction and control of the chief of police and for a time specified in the appointment."

It is argued that the card issued to Williams was somewhat in the nature of a courtesy card and gave no authority to him to act as a policeman except under the explicit direction and control of the Chief of Police. It is not disputed, however, that Ford was a regular policeman of the City and was detailed to assist the detective and

the Supply Company in investigating the stealing. It is also shown that this police officer was present during the beatings and maltreatment of the suspects, although it does not appear that he actually participated in the assaults or that he personally administered any beatings to these suspects. Purnell, one of the victims, testified that Williams flashed a badge and stated that it was his identification, while Priest, another victim, testified that Williams informed him he was from the F. B. I. However, the Government undertakes to support its allegation that Williams was acting under color of law by its showing that he was a special policeman of the City of Miami, pursuant to the charter of the City, and not as a federal officer.

633 There is ample evidence to show that Williams brought the suspects, Priest, Sturniolo, Purnell and Robinson—singly—into a paint shack on the grounds of the Supply Company and there, in the presence of Ford, the city policeman, aided and abetted by Bombaci, Yuhas, and Perry, beat, struck, threatened, intimidated, and otherwise maltreated them so as to provoke admissions or confessions which justified, in the opinion of Williams, the arrest of three out of four suspects. The fourth was released upon the promise that he would become a spy and make reports on others. The records of the Miami Police Department show Priest as having been "arrested by J. Williams and J. Avery". The record does not show that either of the victims was ever brought to trial for the alleged thefts.

A sentence of one year was imposed on Williams under each of the four substantive counts.

Appellant contends: First, that the Fourteenth Amendment, as implemented by Section 20 of the Criminal Code (Section 52, Title 18, U. S. C.), was not intended to bring before the Federal Courts unlawful acts of individuals or state officers unless such acts were authorized by the State; and, Second, that the Court erred in allowing the Government at the close of its case to amend the indictment by striking out the name of "Lindsley Lumber Co., a corporation" and inserting in lieu thereof the words "Dania Supply Company, a corporation, doing business as Lindsley Lumber Co."

We shall dispose of the latter, and easier, of the two propositions first.

634 In any indictment it is required that the accused be definitely informed as to the charges against him so that he may be able to present his defense and so as not to be taken by surprise by evidence offered at the trial, and also that the indictment be sufficiently definite that he shall not be again subjected to another prosecution for the same offense. If an indictment complies with these requirements, it is sufficient, and ordinarily an indictment may be amended provided that the amendment does not violate the above requirements, and provided that any evidence defendant had before the amendment would be equally available to him after the amendment.

If a defendant is in no sense misled, put to added burdens, or otherwise prejudiced, by an amendment, such an amendment ought to be considered and treated as an amendment of form and not of substance, and, therefore, allowable, even though unauthorized by the grand jury. It is noted that "Lindsley Lumber Co., a corporation", was named as a defendant in the indictment, and that Dania Supply Company, a corporation, was not. Insofar, therefore, as the Dania Supply Company, a corporation, is concerned, the amendment bringing it in as a defendant and as doing business as the Lindsley Lumber Co. was a matter of substance and not of form only. However, Dania Supply Company was not convicted and is not here complaining, and we fail to discern how such an amendment, showing only the capacity in which the business of Lindsley Lumber Co. was being conducted, could have in any wise been prejudicial to the Appellant, charged with depriving certain individuals of a federal or constitutional right. The gist of the case was whether or not Wil-
635 liams, acting under color of law, willfully subjected, or caused to be subjected, inhabitants of the State of Florida to deprivation of rights secured or protected by the Constitution and laws of the United States. The question of whether Williams was investigating alleged thefts from, and on the premises of, the Dania Supply Company, a corporation, doing business as the Lindsley Lumber Co., instead of investigating thefts of property of the Lindsley Lumber Co., is not a matter of substance and the amendment of the indictment by inserting the name "Dania Supply Company, a corporation, doing business as Lindsley Lumber Co.", in lieu of the words "Lindsley Lumber Co., a corporation", was without the slightest prejudice to the Appellant.

In *Hagner v. United States*, 285 U. S. 427, it was said:

> "The rigor of old common law rules of criminal pleading has yielded, in modern practice, to the general principle that formal defects, not prejudicial, will be disregarded."

See also *U. S. v. Fawcett* (3 Cir.), 115 F. 2d 764; *U. S. v. Denny*, 165 F. 2d 668, certiorari denied, 333 U. S. 844; Rule 52 and Rule 7 (e) and (f), F. R. Cr. P.

We conclude that the allowance of the amendment without the same thing authorized by the grand jury, even if error, was harmless and did not constitute reversible error insofar as Appellant was concerned.

The other contention of Appellant, that Section 52 did not give the Federal Courts jurisdiction of acts of in-
636 dividuals in such situations where their needs were contrary to the laws of the State, we think has been amply discussed and definitely decided, contrary to the contention of the Appellant, in the following cases by this Court: *Screws v. U. S.*, 140 F. 2d 662; *Crews v. U. S.*, 160 F. 2d 746; *Pullen v. U. S.*, 164 F. 2d 756; and by the Supreme Court of the United States in *U. S. v. Classic*, 313 U. S. 299, and *Screws v. U. S.*, 325 U. S. 91.

In *Screws v. U. S., supra*, we said:

> "The deprivation of liberty or property or life under valid State law constitutes no offense under the act, but it is a deprivation of a constitutional right under a mere *pretense or color of law* by one pretending to act under the authority of the State that calls the section into operation. In the instant case there is evidence to the effect that the alleged warrant of arrest was prepared by the sheriff and was a spurious afterthought." (Emphasis supplied.)

This conclusion seems to have been approved by the Supreme Court in its reversal, for other reasons, of our judgment in the *Screws* case, as revealed by the following statement by Mr. Justice Douglas:

> "It is clear that under 'color' of law means under 'pretense' of law. * * * If, as suggested, the statute was designed to embrace only action which the State in fact authorized, the words 'under color of any law' were hardly apt words to express the idea."

637 In *McCain v. Des Moines*, 174 U. S. 168, there is this definition of "color of law":

> " 'Color of law' does not mean actual law. 'Color,' as a modifier, in legal parlance, means 'appearance as distinguished from reality.' Color of law means 'mere semblance of legal right.' "

In the present case the policeman, Ford, although not in uniform, was present in an official capacity as a policeman of the City of Miami, acting under the authority of the City, and giving, under our holding in *Crews v. U. S., supra,* official color to the investigation. In that case we said:

> "An officer of the law should not be permitted to divest himself of his official authority in actions taken by him wherein he acts, or purports, or pretends, to act pursuant to his authority, and where one, known by another to be an officer, takes the other into custody in a manner which appears on its face to be in the exercise of authority of law, without making to the other any disclosure to the contrary, such officer thereby justifies the conclusion that he was acting under color of law in making such an arrest."

Ford was sent to the scene by a superior police officer of the City of Miami. Williams, the Appellant, who personally committed most of the assaults and did most of the beating, did so in the presence of this duly constituted, or lawful, officer, who, at least, lent color of law to the occasion. Appellant flashed some sort of a badge which clearly justified an inference that he was desirous of creating the impression to the exhibitee that he was act-
638 ing under the badge of law and as an officer of some sort.

We are of the opinion that in the absence of any showing whatsoever that the Appellant made known to the victims that the inquisition was personal or unofficial, rather than under the law, and in view of the possession of a special policeman's card by Williams, his flashing of a badge as a symbol of authority, his arrest of one of the victims, together with the presence of the policeman, Ford, during all of the atrocities in the paint shack, the jury was justified in concluding that the Appellant was either acting under color of law or pretending so to act.

We think the indictment and trial were in conformity to the requirements of law as expressed in the *Classic, Screws, Crews* and *Pullen* cases, and that there is abundant evidence to support the jury's finding that the Appellant was guilty of the offenses charged in the four counts of the indictment upon which convictions were had.

The judgment is

Affirmed.

639 In the United States Court of Appeals

No. 12711 JAY G. WILLIAMS,
versus
UNITED STATES OF AMERICA.

*Judgment—January 10, 1950*

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby affirmed.

640 Clerk's Certificate to foregoing transcript omitted in printing.

641 Supreme Court of the United States

No. 1, Misc.—October Term, 1950.

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

*Order Granting Motion for Leave to Proceed in Forma Pauperis; Granting Petition for Writ of Certiorari, etc.—October 16, 1950*

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted and the case is transferred to the appellate docket as No. 365. The case is assigned for argument immediately following No. 26, United States vs. Williams.

IT IS FURTHER ORDERED that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1950**

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## No. 365

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JAY G. WILLIAMS,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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## PETITIONER'S BRIEF

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BART A. RILEY,
*Counsel for Petitioner.*

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SUPREME COURT OF THE UNITED STAT

OCTOBER TERM, 1950

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# No. 365

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JAY G. WILLIAMS,

*Petitio*

*vs.*

UNITED STATES OF AMERICA

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## PETITIONER'S BRIEF

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### Opinion of the Court Below

The opinion of the court below, the Uni ed States Cou of Appeals for the Fifth Circuit, *Williams* v. *United State* has been reported in 179 Federal 2d 656.

### Jurisdictional Statement

The judgment of the Court of Appeals of the Fifth Circuit was entered January 10, 1950. Writ of Certiorari was granted by this Honorable Court on October 16, 1950. The jurisdiction of this Court is invoked under Section 240 of the Judicial Code (Section 347, Title 28, U. S. Code), and Act of June 7, 1934, (Ch. 426, 48 Stat. 926).

## Statement of the Case

Petitioner Williams, a private detective, was indicted, along with Peevy, Bombaci, Ford, Yuhas, and Lindsley Lumber Co., a corporation, in four counts under Section 52, Title 18, U. S. C. (Section 20, U. S. Criminal Code), for willfully depriving four persons (Purnell, Robinson, Sturnolo, and Priest) of rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, and also in four counts, under Section 51, Title 28, U. S. C. (Section 19, U. S. Criminal Code), for conspiring to injure, oppress, or interfere with the same four individuals in the exercise of rights and privileges under the Constitution and laws of the United States. There was a mistrial of all of the Defendants under the four conspiracy counts under Section 51. There was a conviction of the Appellant Williams, on each of the four counts charging the substantive offenses under Section 52, but the other Defendants were acquitted under those counts.

Later there was a retrial of the four Defendants under a revised indictment on the conspiracy counts which resulted in all four being convicted, which conviction was reversed by the Court of Appeals for the Fifth Circuit *Williams et al.* v. *United States*, 179 Fed. 2d 644 and the United States of America applied for a Writ of Certiorari which was granted by this Court and the case docketed October term, 1950, Number 26.

The petition herein is by Williams from the Judgment of Affirmance of the Court of Appeals for the Fifth Circuit of his conviction and sentence under the four substantive counts under Section 52 of Title 18, U. S. C.[1]

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[1] Section 52 of Title 18, U. S. C., reads:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges,

The indictment charged, in Count 2, that the Appellant, together with Defendants Perry and Bombaci, were special police officers under written authority from the City of Miami, Florida, and acting under the laws of the State and ordinances and regulations of the municipality, who with Charles R. Ford, a police officer of the City of Miami, acting under the laws of the State, together with Andrew J. Yuhas and the Lindsley Lumber Company, did willfully, and under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami, subject, and cause to be subjected, Frank J. Purnell, Jr., an inhabitant of the State of Florida, to deprivations of the rights, privileges, and immunities secured to him and protected by the Fourteenth Amendment to the Constitution of the United States, to wit:

> the right and privilege not to be deprived of liberty without due process of law, the right and privilege to be secure in his person while in the custody of the State of Florida, the right and privilege not to be subjected to punishment without due process of law, the right and privilege to be immune, while in the custody of persons acting under color of the laws of the State of Florida, from illegal assault and battery by any person exercising the authority of said State, and the right and privilege to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State of Florida; that is to say, on or about the 20th day of March, 1947, the defendants arrested and detained and caused to be arrested and detained the said Frank J. Purnell, Jr., and brought and caused him to be brought to and into a certain building sometimes called a shack on the

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or immunities secured or protected by the Constitution and laws of the United States or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both.

> premises of the Lindsley Lumber Co., at or near 3810 N. W. 17th Avenue, in said City of Miami, Florida, and did there detain the said Frank J. Purnell, Jr., and while he was so detained the defendants did then and illegally strike, bruise, batter, beat, assault and torture the said Frank J. Purnell, Jr., in order illegally to coerce and force the said Frank J. Purnell, Jr., to make an admission and confesson of his guilt in connection with the alleged theft of personal property, alleged to be the property of said Lindsley Lumber Co., and in order illegally to coerce and force the said Frank J. Purnell, Jr., to name and accuse other persons as participants in alleged thefts of personal property, alleged to be the property of the said Lindsley Lumber Co., and for the purpose of imposing illegal summary punishment upon the said Frank J. Purnell, Jr.

The other three substantive counts involved are identical except that in the other substantive counts 4, 6, and 8, Chester M. Robinson, Henry W. Priest, and John P. Sturniolo were successively and respectively named as the victims instead of Frank J. Purnell, Jr.

There was substantial evidence in this case to the effect that Williams, the owner and operator of a private detective agency in Miami, Florida, was employed by the Dania Supply Company, doing business as Lindsley Lumber Co., to investigate thefts from it of lumber and material. Williams had a special police card issued by the Director of Public Safety of the City of Miami. He received no compensation as such special police officer and his official status is not very definitely shown by the record. Section 24 (a) of the charter of the City of Miami—which is more of a negation than a definition—provided:

> No person, except as otherwise provided by general law or this charter, shall act as special police or special detective except upon written authority from the director of public safety. Such authority, when

conferred, shall be exercised only under the direction and control of the chief of police and for a time specified in the appointment.

It was argued by Petitioner in the Court of Appeals that the card issued to Williams was somewhat in the nature of a courtesy card and gave no authority to him to act as a policeman except under the explicit direction and control of the Chief of Police. It was not disputed, however, that Ford was a regular policeman of the City and was detailed to assist the detective Petitioner and the Supply Company in investigating the stealing. It is also shown that this police officer was present during the beatings and maltreatment of the suspects, although it does not appear that he actually participated in the assaults or that he personally administered any beatings to these suspects. Purnell, one of the victims, testified that Williams flashed a badge and stated that it was his identification, while Priest, another victim, testified that Williams informed him he was from the F. B. I. However, the Government undertook to support its allegation that Williams was acting under color of law by its showing that he was a special policeman of the City of Miami, pursuant to the charter of the City, and not as a federal officer.

There was ample evidence to show that Williams brought the suspects, Priest, Sturniolo, Purnell, and Robinson—singly—into a paint shack on the grounds of the Supply Company and there, in the presence of Ford, the city policeman, aided and abetted by Bombaci, Yuhas, and Perry, beat, struck, threatened, intimidated, and otherwise maltreated them so as to provoke admissions or confessions which justified, in the opinion of Williams, the arrest of three out of four suspects. The fourth was released upon the promise that he would become a spy and make reports on others. The records of the Miami Police Department

show Priest as having been "arrested by J. Williams and J. Avery". The record does not show that either of the victims was ever brought to trial for the alleged thefts.

A sentence of one year was imposed on Williams under each of the four substantive counts and to run consecutively for a total period of confinement of four years.

The Trial Court followed the direction of this Court in the Screw's Case[2] by charging the jury in conformity with that case that the defendant must have a conscious purpose to willfully deprive a person, the complaining witnesses, or either of them, of a specific constitutional right.

## Specifications of Error

The Court of Appeals Erred:

1. In affirming the judgment of conviction of petitioner Williams.

2. In holding that this Court intended in the case of Screws v. United States, 325 U. S. 91 that the Federal government under Section 52, Title 18, U. S. C. take over the administration of criminal justice from the States to the extent of making every act depriving a person of a constitutional right or privilege by a state or municipal officer holding the merest shadow of authority, where such lawless act is in violation of the laws of such state.

3. In holding by its affirmance of petitioner's judgment of conviction that Section 52, Title 18, U. S. C. did not violate the United States Constitution, Fifth and Sixth Amendments, which require an ascertainable standard of guilt, fixed by Congress rather than by Courts, and secure to accused persons the right to be informed of the nature and cause of accusations against them.

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[2] *Screws v. United States*, 325 U. S. 91.

## The Question Presented

1. DID CONGRESS IN THE PASSAGE OF SECTION 52, TITLE 18 U. S. C. (NOW SECTION 242 OF THE NEW CRIMINAL CODE) INTEND THAT THE FEDERAL GOVERNMENT TAKE OVER THE ADMINISTRATION OF CRIMINAL JUSTICE FROM THE STATES TO THE EXTENT OF MAKING EVERY ACT DEPRIVING A PERSON OF A CONSTITUTIONAL RIGHT BY STATE OR MUNICIPAL OFFICERS HOLDING THE MEREST SHADOW OF AUTHORITY OR PRETENDING TO BE SUCH OFFICER WHERE SUCH ACT, i. e., OF SIMPLE ASSAULT AND BATTERY IS AGAINST THE LAWS OF SUCH STATE?

THE APPELLATE COURT BELOW ANSWERED THIS IN THE AFFIRMATIVE.

2. DOES SECTION 52, TITLE 18 U. S. C. AS APPLIED TO THE FOURTEENTH AMENDMENT VIOLATE THE UNITED STATES CONSTITUTION, FIFTH AND SIXTH AMENDMENTS WHICH REQUIRE AN ASCERTAINABLE STANDARD OF GUILT TO BE FIXED BY CONGRESS RATHER THAN BY COURTS, AND SECURE TO ACCUSED PERSONS THE RIGHT TO BE INFORMED OF THE NATURE OF THE PROHIBITED CONDUCT?

THE APPELLATE COURT BELOW ANSWERED THIS IN THE NEGATIVE.

## Summary of Argument

We are, of course, confronted with *Screws* v. *United States*, 325 U. S. 91 decided in 1945. The Screws decision reversed the lower Court because of the absence of the word "willful" in the Court's charge to the jury.

The two questions presented by petitioner herein were discussed at great length by this Court in the Screws decision by both the majority and dissenting opinions which totaled over 25,000 words.

The dissenting opinion of Justices Roberts, Frankfurter and Jackson is adopted by petitioner in support of his argument on said questions.

The vast reach and grave importance of the Screws decision is being discerned, viz.:

(a) Presidential Executive Order [3] on December 5, 1946, reciting that the Federal government is hampered

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[3] 9808, 11 Federal Register 14,153 (1946).

by inadequate civil rights statutes and the Department of Justice must be provided with the tools to do the job.

(b) The Report of the President's Committee on Civil Rights. Partial Recommendations:[4]

1. Amendment of Section 52 to impose greater penalties.

2. A new statute to supplement Section 52, specifically directed against police brutality and related crimes.

3. To eliminate "the handicap in the use of Section 52, imposed by the Supreme Court in Screws v. United States."

4. To spell out some of the Federal rights which run against public officers.

5. Establishment of regional offices as receiving centers of complaints.[5]

6. Establishment of the permanent Commission on Civil Rights in the Executive Office of the President.[6]

(c) The acceleration by judicial construction and not federal legislation of the concept of "national citizenship" with the same privileges and immunities as state citizenship.[7]

(d) The advance, case by case, by the Civil Rights Section of the Attorney General's Office, to have the standard of guilt as fixed under Sect. 52, Title 18, in the Screws decision to ultimately cover without federal legislation the entire range of constitutional privileges

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[4] pp. 156, 157 Report of President's Committee on Civil Rights.

[5] I. D. at 151, 152:

The Department of Justice has suggested that heads of these regional offices should have the status of Assistant United States Attorneys, thereby preserving the centralization of federal criminal law enforcement. The President's Committee is fearful that under this plan the goal of effective, courageous, nonpolitical civil rights protection in the field will not be reached unless satisfactory measures are taken to prevent these assistants from becoming mere political subordinates within the offices of the United States Attorneys.

[6] I. D. at 153.

[7] I. D. at 99, 113.

and immunities under the guise of the Fourteenth Amendment.[8]

(e) The vast undefined boundaries or scope of this new body of federal offenses under Section 52, Title 18, that now apply to situations where State law is in conformity with the Constitution and local misconduct is in undisputed violation of the laws of that State, it is bound to produce a confusion detrimental to the administration of criminal justice.

## Argument

*Screws* v. *United States,* 325 U. S. 91 decided in 1945, illustrates an unsuccessful attempt to make Section 52 (now 242 of the New Criminal Code Title 18) play the role of a federal antilynching act. In this case, a Georgia sheriff, aided by a deputy sheriff and a local police officer arrested a Negro on a warrant charging him with the theft of a tire. The three men then beat the Negro to death. They were charged with having, under color of law, deprived their victim of his constitutional right under the Fourteenth Amendment to be tried by due process of law when charged with an offense against the state. They were convicted under the above statute in a Federal Trial Court. This Court set the conviction aside on the ground the trial judge did not properly charge the jury by requiring that anyone con-

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[8] I. D. at 117:

In using Section 51 and Section 52 to protect specific rights, the Civil Rights Section has been compelled to employ an experimental technique and to endeavor to extend the list of these rights, case by case. Considerable success has been achieved in this undertaking, and action in the future may expand further the list of rights under Section 51 protected against interference by private individuals. The list of federal rights running against interference by state officers and protected by Section 52 is a somewhat more definite one. Decisions of the Supreme Court in recent years have read many of the rights established by the first ten (10) Amendments into the Fourteenth Amendment. This has made them federal rights against state interference.

Also I. D. at 109.

victed under the section must have had a conscious "Purpose to deprive a person of a specific constitutional right. . . . One who does act with such specific intent is aware that what he does is precisely that which the statute forbids." [9]

The headnote of the Screws decision shows it was reversed without concurrence by a majority of the Court in the grounds of reversal.

In *Screws* v. *United States, supra,* it was argued as here that the defendants did not act "under color of any law" within the meaning of Section 20 of the Criminal Code. In rejecting this contention Mr. Justice Douglas held p. 108:

> Some of the arguments which have been advanced . . . suggest that the question under Sec. 20 is whether Congress has made it a Federal offense for a state officer to violate the law of his state. But there is no warrant for treating the question in state law terms. The problem is not whether state law has been violated but whether an inhabitant of a state has been deprived of a Federal right by one who acts under "color" of any law. He who acts under "color" of law may be a Federal officer or a state officer. He may act under "color" of Federal law or of state law. The statute does not come into play merely because the Federal law or the state law under which the officer purports to act is violated.

However the dissenting Justices Roberts, Frankfurter and Jackson said p. 148, *supra*:

> But assuming unreservedly that conduct such as that now before us, perpetrated by state officers in flagrant defiance of state law, may be attributed to the state under the Fourteenth Amendment, this does not make it action under "color of any law". . . . There is not the slightest warrant in the reason of things for tortur-

[9] Justice Douglas majority opinion 325 U. S. 91.

ing language plainly designed for nullifying a claim of acting under a state law that conflicts with the Constitution so as to apply to situations where state law is in conformity with the Constitution and local misconduct is in undisputed violation of that state law. In the absence of clear direction by Congress we should leave to the states the enforcement of their original law, and not relieve states of the responsibility for vindicating wrongdoing that is essentially local or weaken the habits of local law enforcement by attempting reliance on Federal authority for an occasional unpleasant task of local enforcement.

The dissenting Justices further stated p. 157, *supra*:

> This case does not involve denying adequate power to Congress. There is no difficulty in passing effective legislation for the protection of civil rights against improper State action. What we are concerned with here is something basic in a democratic society, namely, the avoidance of the injustice of prohibiting conduct in terms so vague as to make the understanding of what is proscribed a guess work too difficult for confident judgment even for the judges of the highest Court in the land.
>
> By holding, in this case, that State officials who violate State law nevertheless act "under color of" State law, and by establishing as Federal crimes violations of the vast, undisclosed range of the Fourteenth Amendment, this Court now creates new delicate and complicated problems for the enforcement of the criminal law. The answers to these problems, in view of the tremendous scope of potential offenses against the Fourteenth Amendment, are bound to produce a confusion detrimental to the administration of criminal justice.

It was also contended by petitioner in the Appellate Court that the Government had not proved that Williams was authorized by any law to make an arrest or detain the complaining witnesses. The co-defendant Ford, was sent to

the Lindsley Lumber Co. by his Superior Officer, Barker on the request of Williams, as a private detective, hired by the Lindsley Lumber Company. It can be assumed Ford was sent in order to make a legal arrest of complaining witnesses. This is borne out by the testimony of Chief of Detectives of Miami, Mr. Barker (R. 186).

Justice Douglas in the majority opinion in the *Screws* case, *supra*, said:

> We are not dealing here with a case where an officer not authorized to act nevertheless takes action. Here the state officers were authorized to make an arrest and to take such steps as were necessary to make the arrest effective. They acted without authority only in the sense that they used excessive force in making the arrest effective. It is clear that under 'color' of law means under 'pretense' of law. Thus acts of officers in the ambit of their personal pursuits are plainly excluded. Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it. . . .

The special police officer's authority granted to Williams did not authorize him to make an arrest. Petitioner contended that the Government did not prove this vital point as to the extent of the authority of Williams to make an arrest or to take such steps as were necessary to make the arrest effective.

The Trial Court charged the jury (R. 320, 321) on "color" of law, viz.:

> The essential issue on this question is this. As I have previously indicated, the Federal Statute under which the defendants are here on trial under counts Two, Four, Six and Eight, has no application to a citizen who acts without color of law; that is, of his own personal volition for his own personal reasons. The act upon which these counts are based, applies only when and only to one who acts under the guise or pretense of

authority of law. This statute was not designated to reach private personal controversies between two people. So under these counts, if you find from the evidence that the defendants were not acting under color of law, but solely in their individual capacities, because of personal animosity toward these men, then what they did constitute only a violation of the State law, which should be remedied in the State courts of Florida and is not a violation of any Federal law. But, as I said before, if these men were taken into custody by the defendants, or either of them, and held by defendants, under color of law, by reason of the positions held by the defendants, or some of them, then the ordeal to which the defendants are alleged to have subjected these men, if they did so subject them, constituted a violation of the Federal Statute.

Your attention is further specifically called to the language of the statute upon which these counts are based, which provides that "whoever, under color of law," etc., does the act prohibited, shall be guilty of the offense defined in the statute. Now color of law means a mere semblance of legal right. So, color of law, as used in the statutes, does not necessarily mean the exercise of some specific legal authority vested in an officer of the law, but also semblance, appearance and pretense and implies, in the language of the statute, that the act to which it applies need not necessarily have the real characteristics of a legal act. Therefore, we do not have in this case any question as to whether the defendants, in taking these men into custody and holding them in custody, acted under authority of any law of Florida, but whether or not the taking of these men into custody was done under color of law of Florida, state, county or municipal, arising out of the official positions held by the defendants, or some of them.

The instruction to the jury requested by petitioner Williams and refused by the court (R. 339) was:

(2) Unless the defendants were wielding the power or authority of the State of Florida, or were acting in

their capacities as officers of the State, there can be no offense, because an individual cannot deprive another person of privileges or immunities guaranteed by the 14th Amendment to the Constitution of the United States.

Judge Waller referring to the Screws decision in the Court of Appeals of the Fifth Circuit (*Screws* v. *U. S.*, 140 F. 2d 662) in the opinion herein, *Williams* v. *U. S.*, 179 F. 2d 656 said:

> In *Screws* v. *U. S.*, *supra*, we said: "The deprivation of liberty or property or life under valid State law constitutes no offense under the act, but it is a pretense or color of law by one pretending to act under the authority of the State that calls the section into operation . . ."
>
> This conclusion seems to have been approved by the Supreme Court in its reversal, for other reasons, of our judgment in the *Screws* case, as revealed by the following statement by Mr. Justice Douglas:
>
> It is clear that under "color" of law means under "pretense" of law. * * * If, as suggested, the statute was designated to embrace only action which the State in fact authorized, the words "under color of any law" were hardly apt words to express the idea.

Petitioner contends if the majority rule in the Screws decision of this Honorable Court is not reversed, this Court should clarify the meaning of the application under the statute of 'color of law'.

Following the Screws decision of this Court the Court of Appeals, Fifth Circuit affirmed the conviction in *Crews* v. *U. S.*, 160 F. 2d 746, and Judge Waller stated, p. 747:

> The defendant, although guilty of a cruel and inexcusable homicide, was indicted and convicted merely of having deprived his helpless victim of a constitutional right under strained constructions of an inadequate Federal Statute, and given the maximum sentence

under that statute of one year in prison and a fine of $1,000.

The statute referred to was Section 52 supra.

Petitioner contends that Congress did not intend under the statute that every illegal discrimination, or violation of a constitutional right by a state official acting in violation of state law would be state action for the purpose of a criminal or civil action in a federal court. The Screws decision and the federal cases beginning to stem from that decision are presently posing a practical problem of grave importance, to state officials of every grade of authority. Judges and governors of the states are not immune from the impact of the Screws decision which gave virility and a vast reach to the words "under color of any law."

The Court of Appeals of the Third Circuit in *Vall* v. *Stengel*, 176 F. 2d 697, p. 702 held:

> As we said in Picking v. Pennsylvania R. Co., 151 F. 2d. 240, the decision of the Supreme Court in the Screws case gave virile meaning to the phrase 'under color of any law'.

In *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, Plaintiffs were arrested and charged under New York state law of placing an advertisement on the Flag of the United States. A Civil action was brought under the Third Civil Rights Act (Title 8 U. S. C. Sec. 43)[10] by the Pickings against various state officials including the Governor of the State of Pennsylvania, a State Judge, and the Railroad Company. The Court of Appeals, 3rd circuit, supra said:

> As we read R. S. Sec. 1979 (8 U. S. C. 43) in the light of the Screws decision we are compelled to the conclusion that Congress gave a right of action sounding in

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[10] Title 8 U. S. C. Sec. 43.
Civil Action for Deprivation of Rights.

tort to every individual whose federal rights were trespassed upon by any officer acting under pretense of state law. A field was created upon which a state officer could not tread without being guilty of trespass and liable in damages. The concept is clear enough but the boundaries of the forbidden territory are ill-defined. Mr. Justice Douglas stated the danger vividly when he said in the Screws decision: 'The treacherous ground on which state officials, police, prosecutors, legislators, and judges would walk is indicated by the character and closeness of decisions of this court interpreting the due process clause of the Fourteenth Amendment. . . . Those who enforced local law today might not know for many months (and meanwhile could not find out) whether they did deprive someone of due process of law. The enforcement of a criminal statute so construed would indeed cast law enforcement agencies loose at their own risk on a vast uncharted sea.'

The Court of Appeals in the *Picking* case held:

The statute must be deemed to include members of the state judiciary acting in their official capacity.

Where cause of action against Governor of Pennsylvania, based on his acting upon warrant for extradition of plaintiffs to New York arose under third civil right act, Pennsylvania statutes relieving Governor from liability for his official conduct, if he based it upon advice from Department of Justice, could not relieve him from civil liability.

The Court of Appeals in *McShane* v. *Moldovan*, 6th Circuit, 172 F. 2d 1016, pp. 1020, 1021 held:

The sections of the statute, Title 18, U. S. C. A., Sec. 52 and 88, which were before the court in the Screws case, are not before us in the instant case. Here Title 8 U. S. C. A. Sec. 43, is before us for construction; but it is to be construed as in pari materia with Title 18, U. S. C. A. Sec. 52, making such conduct a criminal offense. Picking v. Pennsylvania R. Co., 3 Cir., 151 F. 2d 240. Certiorari denied 332 U. S. 776, 68 S. Ct. 38.

Robert L. Hale in an article entitled Unconstitutional Acts as Federal Crimes, Harvard Law Review, Vol. 60, p. 65, at p. 109, states in a discussion of the *Screws* case:

> The official report of the *Screws* case opens with the words:
>
> > Mr. Justice Douglas announced the judgment of the Court and delivered the following opinion, in which the Chief Justice, Mr. Justice Black and Mr. Justice Reed Concur.
>
> The opinion of the four Justices is thus not the official opinion of the Court, nor are the views expressed separately by Mr. Justice Murphy, Mr. Justice Roberts, Frankfurter and Jackson. . . . Just what construction the Court may eventually give to Section 20 and to Section 19 remains to be seen. In view of the confusion in the Court's construction of them, congressional clarification may be called for.

The dissenting opinion of the Screws decision at page 157 supra suggests that the strained constructions of the statute can be avoided in that:

> . . . There is no difficulty in passing effective legislation for the protection of civil rights against improper State action.

A review entitled State Action and the Enabling Clause of the Fourteenth Amendment discussed the report of the President's Committee on Civil Rights in the Illinois Law Review, Vol. 44, pp. 199-211 (1949) and on pp. 199-200 stated:

> . . . The purpose of this comment is to appraise the constitutional support for such legislation and to explore the possibility of increasing the area of civil rights protection by use of the enabling clause of the Fourteenth Amendment.
>
> The Fourteenth Amendment.

> The seldom-mentioned enabling or enforcing clause of the Fourteenth Amendment provides: "The Congress shall have power to enforce by appropriate legislation the provisions of this article."[11] To be authorized under this section, legislation must be expressly for a purpose defined in the first four sections of the Amendment and appropriate for accomplishing the purpose. The first section provides that no state (1) shall make or enforce any law abridging the privileges and immunities of citizens of the United States, (2) shall deny any person the equal protection of the laws, and (3) shall deprive any person of life, liberty or property without due process of law. It is, therefore, these prohibitions on the states in the first section of the Amendment that Congress can enforce by legislation under the fifth section, thus making legal the moral sanctions inherent in the Fourteenth Amendment.

And further on p. 210 supra:

> The power granted to Congress by the fifth section to enforce the Amendment, although only as broad as the rights specified in the other sections, is nevertheless a specific grant of power. It is from the fifth section that Congress can declare that certain state action violates the provisions of the Fourteenth Amendment. However, if Congress would declare that certain action or conditions have the effect of denying citizens of one of the protections of the Fourteenth Amendment, then the States and their citizens would be put on notice that certain types of private action deny citizens their legal rights.

and on . . . pp. 202-203:

> . . . While it is true that the Amendment is directed at state and not private action it would be logical for Congress to declare just what action or inaction of

---

[11] . . . U. S. Const.: Amendment XIV, Sect. 5.

the state constitutes a denial to persons of due process of law, of the equal protection of the laws, or of their privileges and immunities as citizens of the United States.

## Second Question

DOES SECTION 52, TITLE 18 U. S. C. AS APPLIED TO THE FOURTEENTH AMENDMENT VIOLATE THE UNITED STATES CONSTITUTION, FIFTH AND SIXTH AMENDMENTS, WHICH REQUIRE AN ASCERTAINABLE STANDARD OF GUILT TO BE FIXED BY CONGRESS RATHER THAN BY COURTS, AND SECURE TO ACCUSED PERSONS THE RIGHT TO BE INFORMED OF THE NATURE OF THE PROHIBITED CONDUCT?

THE APPELLATE COURT BELOW ANSWERED THIS IN THE NEGATIVE.

The dissenting opinion of Mr. Justice Roberts, Mr. Justice Frankfurter and Mr. Justice Jackson is adopted by petitioner in support of the affirmative of the above question.

The careful consideration of this vital question by the dissenting Justices is reflected by their able opinion.

Even the proponents of the separate, unofficial views expressed by Justices Murphy and Rutledge in the Screws decision appear to be critical of the majority, unofficial opinion in: Comments, Vol. 44 Michigan Law Review p. 814, at pp. 821-822.

> When applying intentional conduct as a standard of guilt, Justice Douglas does so in terms of rights to be determined at some future time and concludes that there is no ascertainable standard of guilt. His criteria of "specific intent," however, is applied to "decisions" and rules of law" that have been previously determined. It seems clear that the certainty or uncertainty thus obtained is not derived from the statute but results only from the standard used, i. e., whether the rights involved have been determined by prior or by subsequent decisions. Since intent merely described the state of mind which is required to accompany a proscribed act, a statute must be certain or

uncertain, not in the terms of the intent required, but in terms of itself. Failure to accept the view propounded by Justices Rutledge and Murphy seems to lead either to the exaggerated concreteness demanded by Justice Roberts or the illogical and unnecessary confusion created by Justice Douglas.

The author points out in a note under the above:

> [38] It is interesting to note that before the Classic case it was thought on the authority of Newberry v. United States, 256 U.S. 232, 41 S. Ct. 469 (1921), that primaries were not elections and therefore did not fall within the sphere of federal power. In a sense, therefore, the defendants in the Classic case had no warning that they were depriving anyone of a federally protected right.

## Conclusion

It is respectfully submitted that the judgment of conviction of petitioner should be reversed for the reasons given by the dissenting Justices in the Screws decision.

Respectfully submitted,

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No. 865

# In the Supreme Court of the United States

OCTOBER TERM, 1950

JAY G. WILLIAMS, PETITIONER

*v.*

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## BRIEF FOR THE UNITED STATES

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# In the Supreme Court of the United States

OCTOBER TERM, 1950

No. 365

JAY G. WILLIAMS, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE UNITED STATES

### OPINION BELOW

The opinion of the Court of Appeals (R. 344) is reported at 179 F. 2d 656.

### JURISDICTION

The judgment of the Court of Appeals was entered on January 10, 1950 (R. 351). The petition for a writ of certiorari was filed on February 4, 1950, and was granted on October 16, 1950 (R. 351). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

## QUESTIONS PRESENTED

1. Whether Section 20 of the Criminal Code—making it an offense for any person, acting under color of law, willfully to deprive another of any federal rights, privileges, or immunities—is violated by a special police officer who in his official capacity arrests a person suspected of crime and subjects him to the "third degree" in order to obtain a confession; and if so, whether the statute, as so applied, is unconstitutional for failure to provide an ascertainable standard of guilt.

2. Whether the evidence supports the jury's finding, implicit in the verdict, that petitioner acted under color of law.

## STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 20 of the Criminal Code, 18 U. S. C. (1946 ed.) 52 (now 18 U. S. C. (1948 rev.) 242), provided in pertinent part during the period involved in this case:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United

States * * * shall be fined not more than $1,000, or imprisoned not more than one year, or both.

The Fourteenth Amendment to the Constitution of the United States provides:

> SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> * * * * *
>
> SEC. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## STATEMENT

On November 15, 1948, petitioner Williams, along with Ford, Bombaci, Perry, Yuhas, and Lindsley Lumber Company, a corporation, was indicted in the United States District Court for the Southern District of Florida, in eight counts, four under Section 20 and four under Section 19

of the Criminal Code[1] (R. 1). Counts Two, Four, Six and Eight charged each of the defendants with violations of Section 20 in that, on or about March 28, 1947, Williams, Bombaci, and Perry, while acting as special police officers by virtue of written authority under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami, and Ford, while acting as a regular police officer under the laws of the State of Florida and the ordinances and regulations of the municipality of Miami, all of whom were aided and abetted by Yuhas and Lindsley Lumber Company, did willfully, under color of the laws, statutes, ordinances, regulations, and customs of the State of Florida and of the municipality of Miami, subject and cause to be subjected four named inhabitants[2] of the State

[1] Section 19 (18 U. S. C. (1946 ed.) 51 (now 18 U. S. C. (1948 rev.) 241), provided:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than $5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

[2] The four even-numbered counts differed only as to the victim named: Purnell (count 2); Robinson (count 4); Priest (count 6); Sturniolo (count 8).

of Florida to the deprivation of the following rights, privileges and immunities secured to each of them and protected by the Fourteenth Amendment to the United States Constitution: not to be deprived of liberty without due process of law; to be secure in his person while in the custody of the State; not to be subjected to punishment without due process of law; to be immune, while in the custody of persons acting under color of the laws of the State, from illegal assault and battery by any person exercising the authority of the State; and to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the State. It was further charged that the defendants arrested and detained each of the named victims and brought him to a shack on the premises of the Lindsley Lumber Company where they physically beat and tortured him in order illegally to coerce and force him to confess his guilt in connection with alleged thefts of property from the Company and to implicate other persons as participants in the thefts, and for the further purpose of imposing illegal summary punishment upon him (R. 2–4, 5–7, 8–10, 11–13).[3]

[3] The trial court allowed the Government at the close of its case to amend the indictment by substituting for the name "Lindsley Lumber Company," the true name of the corporate defendant, "Dania Supply Company, a corporation, doing business as Lindsley Lumber Company." (R. 170, 177.) In the court below petitioner contended, but unsuccessfully (R. 347–349), that such substitution constituted prejudicial error as to him; he has apparently abandoned the point here.

Counts One, Three, Five, and Seven (R. 1, 4, 7, 10) charged the same defendants with having conspired to injure, oppress, threaten and intimidate the respective victims named in the even-numbered counts in the free exercise and enjoyment of rights and privileges guaranteed to them under the Fourteenth Amendment, in violation of Section 19. The alleged object of the conspiracy in each instance was the commission of the substantive offense charged in the corresponding even-numbered count.

Petitioner was found guilty on the four substantive counts (R. 15), and was sentenced to one year's imprisonment on each, the terms to run consecutively (R. 17–18). On appeal to the Court of Appeals for the Fifth Circuit, the judgment of conviction was affirmed (R. 344, 351).

The other defendants were acquitted on the substantive counts (R. 15), and the jury was unable to agree on the conspiracy counts (R. 16). Subsequently, all the defendants were again indicted and tried on conspiracy charges under Section 19, and were convicted. The validity of these convictions is now pending before this Court, No. 26. A third case, No. 134, involving an indictment for perjury allegedly committed at the trial in the instant case, is also pending.

The evidence adduced in support of the allegations in the indictment may be summarized as follows: Dania Supply Company, a Florida corporation doing business and known as Lindsley Lumber Company, believing that employees were stealing company property, engaged the Continental Detective Bureau to ascertain who was responsible for the thefts (R. 212, 226). Petitioner was the "Chief" of the Continental Detective Bureau (R. 209, 211–212), and the holder of a special police officer's card issued by the Director of Public Safety of the City of Miami (R. 145–147, 150–151, 152, 212), having taken an oath and duly qualified as a special police officer (R. 151). Perry and Bombaci were employees of the detective agency (R. 240–241, 199, 200), and Ford was a regular police officer of the City of Miami (R. 188). The defendants, together with Yuhas and one Giroux, were assigned to assist in the investigation under petitioner's supervision (R. 120–122, 212, 213, 220, 226, 227, 230–231, 241).

The investigation centered upon the persons named in the indictment as the victims of the beatings: Purnell, Robinson, Priest, and Sturniolo. Over a period of three days, each was taken into a paint shack on the company's premises and extensively questioned about the thefts.

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Following disclaimer of guilt by each of the victims, he was subjected to prolonged interrogation, accompanied by physical violence.[4] The typical equipment of the "third degree" was used: a bright light focussed on the victim's eyes (R. 28, 79, 88, 122, 124–125), a rubber hose (R. 79), a pistol (R. 32, 83, 135, 295), and other weapons and implements (R. 32, 58, 104, 108, 123–125). Each victim was beaten and oppressed until he "confessed" (R. 31; 57–58; 82; 102–103).

In these events petitioner did most of the questioning (R. 30, 31, 125; 55; 78, 82, 94; 102) and for the most part administered the beatings (R. 32; 102, 108, 123, 128; 283). It was petitioner who, after knocking Purnell out of his chair (R. 29), repeatedly struck him in the stomach. Later, while Purnell was trying to recover from a paralyzing blow which one of the others had landed with a blunt instrument, petitioner knocked him out of his chair again (R. 31). Petitioner forced Priest to look directly into a 150-watt light for fifteen minutes, after which, he testified, "I couldn't see nothing. I was blind" (R. 79), whereupon petitioner struck him six or eight times with a rubber hose. Fol-

[4] As to Purnell: R. 29, 30–31, 32, 36–37, 45–46, 47–48, 49, 55, 85–87, 104, 125, 134; as to Robinson: 34, 56, 57, 58, 59, 60, 62, 68–69, 70–71, 72–73, 75, 76, 118, 125–126, 134, 259; as to Priest: R. 69, 74, 79, 80, 82, 83, 94, 97–98, 100, 101, 124–125, 129, 134, 283–284; and as to Sturniolo: 54, 58–59, 102–103, 119, 123, 134, 260, 294–295.

lowing an interlude during which another defendant administered blows with a sash cord, petitioner knocked Priest to the floor with a blow to the head, having remarked that the victim (aged 51, R. 77) was a "pretty tough old son-of-a-bitch." (R. 79.) Petitioner also threatened Priest with an automatic pistol, but the latter had at that point been beaten so severely that he was indifferent to this threat: "You can take me out in the Everglades and kill me, because you have beat me so bad, it wouldn't hurt me." (R. 83.) Another witness, Giroux, testified that the times petitioner struck Priest were "too numerous to mention." (R. 124.) Sturniolo testified that when he was brought into the shack, "Williams did the beating as far as I could see." (R. 102.) And it was petitioner who, following the beatings administered to Robinson, backed him into a corner, jamming him in the chest with a half-inch dowell stick, and threatened to "finish" him "if you ever take this to court." (R. 58.) Giroux testified as follows with respect to the assaults on Robinson (R. 125–126):

> He took a terrific beating. He took one of the worst beatings of all of them. The Chief wasn't satisfied and he just beat him and hit him, and the perspiration was just running off Mr. Williams, and he said, "Boy, this guy is about to wear me out." And every time he would go near, he would wallop him and sock him with this instrument. * * *

> And [Detective Ford] says one time to the Chief, "Take it easy. You will kill that guy." And the Chief says, "No he wants to be beaten." And he would walk in front of him and say, "You like me don't you?" And hit him, and he said, "Yes, sir, I do."
>
> Finally Robinson confessed. After the beating, I don't know whether the man knew what he was talking about or not. And everything they said, he would say, "Yes". It didn't make sense what he was saying.

Each "interrogation" lasted at least several hours (R. 32, 44; 56, 57, 58, 62; 82, 91; 103, 107), and in some cases after the beatings, petitioner handcuffed the victim and placed him in an automobile parked near the shack (R. 32–33, 80, 300), usually handcuffing the victim directly to the steering post of the automobile (R. 34, 54, 58, 88, 104, 124) and leaving him there for some time (R. 32, 33, 39), only to resume the inquisition thereafter (R. 33, 40, 80, 91). Each of the victims suffered painful physical injuries (R. 36, 37, 45, 46, 47, 48, 51, 85–87; 60, 66, 68, 70, 72, 73, 75, 76; 93, 97–98, 100, 101; 105, 118, 119), aside from the emotional effects of the experience (R. 46, 69, 97).

Following the incidents, petitioner and some of the others took three of the victims to the police station, where they were fingerprinted and briefly detained (R. 59, 83, 92, 105, 109). None was prosecuted.

## SUMMARY OF ARGUMENT

### I

Section 20 is not confined in its application to instances where persons acting under color of law willfully deprive others of their lives without due process of law, as was true in *Screws* v. *United States,* 325 U. S. 91. It is equally applicable to a case such as this where a special policeman, acting in his official capacity as a law-enforcement officer, willfully deprives persons of their liberty and bodily security, in violation of the rights secured to them by the Fourteenth Amendment, by arresting, detaining, and brutally beating them in order to obtain "confessions" from them. And, as so construed and applied, the statute provides an ascertainable standard of guilt.

### II

Petitioner was a special police officer of the city of Miami, Florida, and as such misused the power vested in him by the state when he arrested and subjected the complaining witnesses to a "third degree" inquisition. The fact that he abused this power, while clothed with the authority of the state, does not mean that he did not act "under color of law", as that term in Section 20 has been construed in the *Classic* and *Screws* cases. It was a question of fact, for the jury to consider on the basis of all the evidence, whether petitioner acted for purely personal and private purposes,

or in his official capacity as a public law-enforcement officer seeking evidence that the complaining witnesses had committed the thefts. The jury were correctly instructed as to the meaning of this element of the offense, and the evidence amply supported their finding of petitioner's guilt.

## ARGUMENT

### I

### PETITIONER'S ACTS CONSTITUTED A PLAIN VIOLATION OF SECTION 20, AND AS APPLIED TO SUCH ACTS THE STATUTE PROVIDED AN ASCERTAINABLE STANDARD OF GUILT

Petitioner's main contention seems to be that Section 20 of the Criminal Code—which in comprehensive terms makes it a federal offense for any person, acting under color of law, willfully to deprive another of any rights, privileges, or immunities secured to him by the Constitution and laws of the United States—does not apply to the acts of a municipal law enforcement officer who in his official capacity arrests a person suspected of crime and subjects him to the "third degree", involving lengthy continuous questioning punctuated by brutal physical assaults, in order to extract a "confession."

The conclusive answer to this contention is to be found in the rulings made by a majority of

this Court in *Screws* v. *United States,* 325 U. S. 91. So far as the applicability of Section 20 is concerned, this case differs from *Screws* only in the fact that here the victims did not die from the beatings. Petitioner's brief stresses that he committed only "simple assault and battery." But the brutal beatings and protracted interrogation to which his victims were subjected was far more than mere "assault and battery": it was trial and punishment by ordeal, in clear violation of the rights secured by the Fourteenth Amendment, and the victims were no less deprived of their constitutional rights because they survived the ordeal. Nothing in Section 20, or the cases construing it, supports the novel view that the only constitutional right protected is the right not to be deprived of life without due process by officials acting under color of law. On the contrary, the statutory protection extends to every federal right which "has been made specific by the express terms of the Constitution or laws of the United States or by decisions interpreting them." *Screws* v. *United States, supra,* p. 104 (opinion of Douglas, J.). And "it is plain that basic to the concept of due process of law in a criminal case is a trial—a trial in a court of law, not a 'trial by ordeal.' *Brown* v. *Mississippi,* 297 U. S. 278, 285." *Id.* p. 106.

Petitioner renews the contention rejected by six Justices of this Court in the *Screws* case[5] that Section 20 fails to provide an ascertainable standard of guilt as applied to rights secured by the Fourteenth Amendment. The *Screws* decision authoritatively establishes the validity of the statute as applied to Fourteenth Amendment rights which have been made specific and definite by judicial decisions. See 325 U. S. at pp. 103–105 (opinion of Douglas, J.); p. 131 (opinion of Rutledge, J.);[6] pp. 136–137 (opinion of Murphy, J.).

The constitutional rights involved in this case, as charged in the indictment (*supra,* p. 5) and

[5] Notwithstanding that a majority of the Justices could not agree on a single opinion, analysis of the positions taken by the members of the Court in the *Screws* case clearly shows that six Justices concurred in two holdings: (1) that official actions taken by law enforcement officers by virtue of authority possessed under state law do not lose their character as actions "under color of any law" because they constitute an abuse and violation of such authority; (2) that Section 20 is to be construed as protecting every right which has been made definite by decision or other provision of law, and as so construed is not unconstitutionally vague. The case was remanded for a new trial because four Justices, whom Mr. Justice Rutledge joined only in order to avoid a stalemate, believed that the jury had not been properly instructed as to the intent required under the statute. See Brief for the United States in No. 26, pp. 23–28.

[6] Mr. Justice Rutledge stated that "there is a body of well-established, clear-cut fundamental rights, including many secured by the Fourteenth Amendment, to all of which the sections [Sections 19 and 20 of the Criminal Code] may and do apply, without specific enumeration and without creating hazards of uncertainty for conduct or defense."

as stated by the trial court in its instructions to the jury (R. 314–315, 316–317), are as follows: (1) the right not to be deprived of liberty without due process of law; (2) the right to be secure in one's person while in the custody of the state; (3) the right not to be punished without due process of law; (4) the right to be immune, while in the custody of persons acting under color of the laws of the state, from illegal assault and battery by any person exercising the authority of the state; and (5) the right to be tried by due process of law and if found guilty to be sentenced and punished in accordance with the laws of the state. The court instructed the jury that each of these rights is protected by the Fourteenth Amendment and is within the protection of Section 20 (R. 317).

It is clear that these rights have been made specific and definite by judicial decisions. The constitutional rights here involved are substantially the same as those in the *Screws* case except, as already noted, that the victims in this case were not deprived of their lives. See 325 U. S. 91, 93. The opinion of Mr. Justice Douglas clearly holds that these rights are sufficiently specific and definite to provide an ascertainable standard of guilt for those who act with intent to violate such rights (p. 106). And on this point Mr. Justice Rutledge (p. 131) and Mr. Justice Murphy (pp. 136–137) concurred. See also

*Chambers* v. *Florida*, 309 U. S. 227, 236–237, 240; *Brown* v. *Mississippi*, 297 U. S. 278; *Powell* v. *Alabama*, 287 U. S. 45; *Moore* v. *Dempsey*, 261 U. S. 86; *Meyer* v. *Nebraska*, 262 U. S. 390, 399; *Civil Rights Cases*, 109 U. S. 3, 23–24; *Hurtado* v. *California*, 110 U. S. 516; *Holden* v. *Hardy*, 169 U. S. 366; *Bute* v. *Illinois*, 333 U. S. 640; *Strauder* v. *West Virginia*, 100 U. S. 303, 310; *Watts* v. *Indiana*, 338 U. S. 49, 55; *Turner* v. *Pennsylvania*, 338 U. S. 62; *Harris* v. *South Carolina*, 338 U. S. 68; and *Johnson* v. *Pennsylvania*, 340 U. S. 881. The Fourteenth Amendment rights involved in this case were also involved in the following cases, and were held sufficiently definite: *Catlette* v. *United States* 132 F. 2d 902 (C. A. 4); *Culp* v. *United States*, 131 F. 2d 93 (C. A. 8); *Crews* v. *United States*, 160 F. 2d 746 (C. A. 5); *United States* v. *Frierweiler*, 52 F. Supp. 4 (E. D. Ill.); *United States* v. *Sutherland*, 37 F. Supp. 344 (N. D. Ga.).

It should be noted that petitioner's brief (p. 6) concedes that the trial court "followed the direction of this Court in the *Screws* case by charging the jury in conformity with that case that the defendant must have a conscious purpose to willfully deprive a person, the complaining witnesses, or either [any] of them, of a specific constitutional right." The court instructed the jury that "the word 'willfully' appearing in this statute, has a meaning and a very distinct and

definite meaning that you should consider" (R. 322); and that (R. 322–323):

> * * * It is not sufficient that the defendants here had generally a bad purpose in doing the things they are alleged to have done, or that they went too far because of an excess of zeal in their desire to obtain a confession from these men. In order to convict under these counts—Two, Four, Six and Eight—it is necessary for the jury to find that the defendants had in mind the specific purpose of depriving these men of one or more of the Constitutional rights I have previously enumerated to you. I don't mean by that, gentlemen, that in order for you to convict these defendants or any of them, that you must believe that they were saying over and over to themselves, "These men are protected by the Fourteenth Amendment to the Constitution of the United States, which is implemented by Acts 51 and 52 of the Title 18, United States Code Annotated." I don't mean that at all, and you know I don't, but I mean that they must, in order for you to determine that they acted willfully, that they had generally in mind that these men had rights guaranteed to them by the basic laws of this country, and they were knowingly depriving them of these rights.
>
> The law denies to anyone acting under color of law, statute ordinance, regulation or custom the right to try a person by ordeal; that is, for the officer himself to inflict such punishment upon the person as

> he thinks the person should receive. Now in determining whether this requisite of willful intent was present in this case as to these counts, you gentlemen are entitled to consider all the attendant circumstances; the malice, if any, of the defendants toward these men; the weapon used in the assault, if any; and the character and duration of the investigation, if any, of the assault, if any, and the time and manner in which it was carried out. All these facts and circumstances may be taken into consideration from the evidence that has been submitted for the purpose of determining whether the acts of the defendants were willful and for the deliberate and willful purpose of depriving these men of their Constitutional rights to be tried by a jury just like everyone else.'

In view of these instructions, it is clear that the trial court properly charged the jury as to the "specific intent" required under the construction given Section 20 in the *Screws* case.

## II

THE EVIDENCE AMPLY JUSTIFIED THE JURY'S FINDING, IMPLICIT IN THE VERDICT, THAT PETITIONER ACTED UNDER COLOR OF LAW.

Petitioner contends that Section 20 does not apply to deprivations of constitutional rights

[7] The court repeated to the jury at R. 324 and 327 that, in order to convict, they must find that the defendants specifically intended to deprive the complaining witnesses of the constitutional rights enumerated in the indictment.

"by state or municipal officers holding the merest shadow of authority" where such acts are in violation of the laws of the state (Br., p. 7). He makes no claim that the acts for which he was convicted were of a personal nature, and that in committing these acts, he was acting entirely as a private individual.

1. The opinion of Mr. Justice Douglas in the *Screws* case recognized that "acts of officers in the ambit of their personal pursuits are plainly excluded" from Section 20 (325 U. S. at 111).[8] In accordance with this construction of the statute, the trial court here expressly charged the jury that the statute "was not intended to cover and does not cover personal and individual acts of a citizen in wrongfully depriving another citizen of the Constitutional rights guaranteed to him by the Fourteenth Amendment"; that it "was not designed to reach, and does not reach the personal individual acts of one person towards another, when the act is not done under color of State law, even though the person com-

[8] In *United States* v. *Waddell*, 112 U. S. 76, 80, the Court, referring to Section 19, said: "The right here guaranteed is not the mere right of protection against personal violence. This, if the result of an ordinary quarrel or malice, would be cognizable under the laws of the State and by its courts." It is also a good defense under Section 20 that the alleged denial of constitutional rights was not "willful" because it resulted from an honest error of judgment made in good faith and with a purpose "unrelated to the disregard of any constitutional guarantee." *Screws*, p. 97 (Douglas, J.) and pp. 129–131 (Rutledge, J.).

mitting the act is the holder of a public office"; that it "is important that you keep clearly in mind the legal distinction which I have just pointed out to you between the personal and individual acts of a citizen holding a public office and the illegal misuse of power possessed by virtue of his office"; that Section 20 does not apply to a person who acts "of his own personal volition for his own personal reasons"; and that it "was not designed to reach private personal controversies between two people" and hence if the jury finds that the defendants were acting "solely in their individual capacities, because of personal animosity towards these men, then what they did constitutes only a violation of the State law which should be remedied in the State courts of Florida and is not a violation of any Federal law" (R. 319–321).

The court's further instructions on the necessity for finding that the defendants acted "under color of law," in order to convict them, were explicit and detailed (R. 319–321):

> The statute [Section 20] applies only to one who acts under guise of color or authority of state law and thus brings about the illegal deprivation of Constitutional rights * * * it is the law that any misuse of power possessed by virtue of State law, made possible only because the wrongdoer is clothed with authority of State law, is action taken under color of State law. * * *

This brings us to the question of whether or not Purnell, Robinson, Priest and Sturniolo were taken into custody by the defendants and held by virtue of the authority vested in them as officers of the law. An officer of the law does not have the power to divest himself of his official authority in actions taken by him which on their face appear to be actions taken pursuant to his authority, but his official position does not deprive him of the right to act as an individual in personal altercations with others. * * * you must take into consideration the circumstances under which it is charged the defendants took these men into their custody and determine whether or not in so doing, and in doing what they did, the action taken by them was taken "under color of State law."

If you find from the evidence in this case that the defendants took these men into their custody under color of law by reason of the positions they, or some of them, held, then the court charges you that these men had the right to be tried upon any charges for which he had been arrested, in a regularly constituted court of justice having jurisdiction, and if found guilty, subjected to the usual pains and penalties applicable to all persons alike for the offense charged. The defendants had the right to question them, but of course they had no right to coerce, misuse or beat them in the effort to extort a confession from them.

The essential issue on this question is this. As I have previously indicated, the Federal Statute under which the defendants are here on trial under counts Two, Four, Six and Eight, has no application to a citizen who acts without color of law: that is, of his own personal volition for his own personal reasons. The act upon which these counts are based, applies only when and only to one who acts under the guise or pretense of authority of law. This statute was not designed to reach private personal controversies between two people. So under these counts, if you find from the evidence that the defendants were not acting under color of law, but solely in their individual capacities, because of personal animosity toward these men, then what they did constitute only a violation of the State law, which should be remedied in the State courts of Florida and is not a violation of any Federal law. But, as I said before, if these men were taken into custody by the defendants, or either of them, and held by defendants, under color of law, by reason of the positions held by the defendants, or some of them, then the ordeal to which the defendants are alleged to have subjected these men, if they did so subject them, constituted a violation of the Federal statute.

Your attention is further specifically called to the language of the statute upon

> which these counts are based, which provides that "whoever, under color of law," etc., does the act prohibited, shall be guilty of the offense defined in the statute. Now color of law means a mere semblance of legal right. So, color of law, as used in the statutes, does not necessarily mean the exercise of some specific legal authority vested in an officer of the law, but also semblance, appearance and pretense and implies, in the language of the statute, that the act to which it applies need not necessarily have the real characteristics of a legal act. Therefore, we do not have in this case any question as to whether the defendants, in taking these men into custody and holding them in custody, acted under authority of any law of Florida, but whether or not the taking of these men into custody was done under color of law of Florida, state, county or municipal, arising out of the official positions held by the defendants, or some of them.

These instructions correctly applied the interpretation given "under color of law", as used in Section 20, in *United States* v. *Classic,* 313 U. S. 299, 326, and in the *Screws* case, 325 U. S. 91. Mr. Justice Stone's opinion for the Court in the *Classic* case stated (p. 326):

> Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority

of state law, is action taken "under color of" state law.[8]

The meaning which the *Classic* case gave to the phrase "under color of law" was expressly approved in the opinions of Mr. Justice Douglas (pp. 107–113) and Mr. Justice Rutledge (pp. 114–117), and impliedly in the opinion of Mr. Justice Murphy (pp. 134–138) in the *Screws* case. This definition has also been followed by the lower federal courts: *Crews* v. *United States,* 160 F. 2d 746, 750 (C. A. 5); *Catlette* v. *United States,* 132 F. 2d 902, 905–906 (C. A. 4); *Culp* v. *United States,* 131 F. 2d 93, 98 (C. A. 8); *United States* v.

[8] As early as 1879, only 11 years after adoption of the Fourteenth Amendment, this Court held in *Ex parte Virginia,* 100 U. S. 339, 346–347:

> * * * The prohibitions of the Fourteenth Amendment are directed to the States * * *. It is these which Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be executive, legislative, or judicial. * * *
>
> * * * Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning.

*Ex parte Virginia* does not stand alone; it is merely the first in a long series of cases holding that action by state officers exercising powers which they are authorized to exercise under state law does not lose its character as state action merely because such officers exceed their authority. See cases cited by Mr. Justice Rutledge in his opinion in the *Screws* case, 325 U. S. 91, 115, note 6.

*Trierweiler,* 52 F. Supp. 4, 6 (E. D. Ill.); *United States* v. *Sutherland,* 37 F. Supp. 344, 346 (N. D. Ga.).

2. In view of the instructions, the jury's verdict of guilt constitutes a finding that petitioner acted "under color of law," as that term is defined in the *Classic* and *Screws* cases. There remains the question whether the evidence was sufficient to permit the jury to make such a finding. This Court has held that the concurrence of both lower courts in the sufficiency of the jury's verdict will ordinarily preclude reexamination of the evidence. *United States* v. *Johnson,* 319 U. S. 503, 518; *Delaney* v. *United States,* 263 U. S. 586, 589–590. In any event, the evidence here amply warranted the jury in concluding that petitioner acted "under color of law." He was a special police officer of the City of Miami, having been designated as such by the Director of Public Safety of the city under the authority of an express provision of the city charter (R. 144–147, 150–152, 154–156, 158–159, 212).[10] This provision states that the authority of

[10] Section 24 (a) of the Charter of the City of Miami provides in pertinent part:

> No person, except as otherwise provided by general law or this charter, shall act as special police or special detective except upon written authority from the director of public safety. Such authority, when conferred, shall be exercised only under the direction and control of the chief of police and for a time specified in the appointment.
>
> The members of the police force of said city shall be

special police officers "shall be exercised only under the direction and control of the chief of police", and it was testified by an official of the Miami Police Department that special police officer cards, such as that held by Williams, are issued "to facilitate the work of private patrolmen and private detectives, who, although operating or participating in private business, are considered a service to the City of Miami" (R. 155).

There is no reason to believe that the status and powers of special police officers in Miami, Florida, differ from those which prevail generally. As this Court said in *Labor Board* v. *Jones & Laughlin Co.*, 331 U. S. 416, 429, 431: "It is a common practice in this country for private watchmen or guards to be vested with the powers of policemen, sheriffs or peace officers to protect the private property of their private employers. And when they are performing their police functions, they are acting as

invested with all the power and authority necessary for enforcing the ordinances of said city.

The chief of police or any policeman of the City of Miami, may arrest without warrant, any person violating any of the ordinances of the city committed in the presence of such officer, and when knowledge of the violation of any ordinance of said city shall come to the said chief of police or policeman, not committed in his presence, he shall make affidavit before the judge or clerk of municipal court against the person charged with such violation, whereupon, said judge or clerk shall issue a warrant for the arrest of such person. (Code of City of Miami, Florida, Michie ed., 1945, pp. 44–45.)

public officers and assume all the powers and liabilities attached thereto. * * * In other words, special policemen are public officers when performing their public duties." In support of this proposition the Court cited the following cases: *Thornton* v. *Missouri Pacific Ry. Co.*, 42 Mo. App. 58; *Dempsey* v. *New York Central & Hudson River R. Co.*, 146 N. Y. 290, 40 N. E. 867; *McKain* v. *Baltimore & Ohio R. Co.*, 65 W. Va. 233, 64 S. E. 18; *Neallus* v. *Hutchinson Amusement Co.*, 126 Me. 469, 139 A. 671; *New York, Chicago & St. Louis Ry. Co.* v. *Fieback*, 87 Ohio St. 254, 100 N. E. 889; *Pennsylvania R. Co.* v. *Deal*, 116 Ohio St. 408, 156 N. E. 502. See also *Kirkpatrick* v. *Alan Wood Steel Co.*, 338 Pa. 126, 12 A. 2d 22."

Under Florida law every "peace officer" is given broad powers of arrest not available to private individuals. Fla. Stat., § 901.15 (as

[11] In upholding the constitutionality of municipal ordinances subjecting the business of private detectives to police supervision, this Court pointed out that such ordinances "provide in effect that all who engage in it [police activity] or are connected with it as a business shall have the sanction of the State, have the stamp of the State as to fitness and character, take an oath to the State for faithful execution of its duties and give a bond for their sanction." *Lehon* v. *City of Atlanta*, 242 U. S. 53, 55. In the instant case Williams took an oath of office upon entering upon his duties as a special police officer (R. 149–151), and he testified that, before being issued a special police card, "I was investigated by the State of Florida, and had to stand a lengthy investigation of my past" (R. 224). The record does not indicate whether he had to furnish a bond.

amended, Laws of 1943, c. 21782).[12] The Supreme Court of Florida has held that these powers extend to "sheriffs, police officers, and other executive officers in this state." *Osborne* v. *Florida*, 87 Fla. 418, 419. In construing a similar statute, the Supreme Court of Tennessee stated that "'peace officer' is an exceedingly comprehensive term, embracing public officials of practically every class and position * * *." *Vickers* v. *State*, 176 Tenn. 415, 419, 142 S. W. 2d 188, 189. See also *Williams* v. *Commonwealth*, 142 Va. 667,

[12] This statute provides:

A peace officer may without warrant arrest a person:

(1) When the person to be arrested has committed a felony or misdemeanor or violation of a municipal ordinance in his presence. In the case of such arrest for a misdemeanor or violation of a municipal ordinance, the arrest shall be made immediately or on fresh pursuit.

(2) When a felony has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it.

(3) When he has reasonable ground to believe that a felony has been or is being committed and reasonable ground to believe that the person to be arrested has committed or is committing it.

(4) When a warrant has been issued charging any criminal offense and has been placed in the hands of any peace officer for execution.

Although the Florida statutes make no provision for arrests by private persons, it has been held that the latter have the common-law right to make arrests only for felonies committed in their presence. *Dorsey* v. *United States*, 174 F. 2d 769 (C. A. 5). Cf. Fla. Stats. §§ 354.01 and 354.02, which provide for the appointment by the Governor of special officers for railroads and other common carriers, and empower such officers to make arrests, carry weapons, etc.

128 S. E. 572, 573, holding that special policemen are "peace officers" within a Virginia statute. And the provisions of the Miami city charter quoted above (footnote 10) indicate that special police officers, in exercising their duties as such, have the same powers as regular city policemen.

We believe it clear that petitioner, as a special police officer of the City, was "clothed with the authority of state law." But even if there should be any doubts as to the extent of the authority which his status as a special police officer gave him, the record clearly shows that petitioner's acts in this case were incident to an *official* investigation instituted and conducted under the aegis of the state.[13] It was not disputed that Ford,

[13] It is clear that actions of individuals or organizations which exercise a public or governmental function or which have a sufficient nexus with the State are subject to the prohibitions of the Fourteenth Amendment. *Marsh* v. *Alabama*, 326 U. S. 501; *Smith* v. *Allwright*, 321 U. S. 649; *Kerr* v. *Enoch Pratt Free Library*, 149 F. 2d 212 (C. A. 4); cf. *Steele* v. *Louisville & N. R. R.*, 323 U. S. 192; and see Note, 61 Harv. L. Rev. 344. In *Nixon* v. *Condon*, 286 U. S. 73, 89, the Court said: "The test is not whether [such individuals or organizations] are the representatives of the State in the strict sense in which an agent is the representative of the principal. The test is whether they are to be classified as representatives of the State to such an extent and in such a sense that the great restraints of the Constitution set limits to their action." The Court there held that the executive committee of a political party were invested with governmental authority under state law and had "become to that extent the organs of the State itself, the repositories of official power", because they were "acting in matters of high public interest, matters intimately connected with the capacity of government to exercise its functions unbrokenly and smoothly." *Id.*, p. 88.

a regular policeman of the city, was detailed by a superior police officer to assist Williams in the investigation of the alleged thefts, and, as the court below pointed out (R. 350), throughout the entire interrogations and assaults, Ford "was present in an official capacity as a policeman of the City of Miami, acting under the authority of the City, and giving, under our holding in *Crews* v. *United States, supra,* official color to the investigation."

The Chief of Detectives of the Miami Police Department testified that he assigned Ford to the investigation "at the request of Mr. Williams, who stated to me that he had uncovered some irregularities at the Lindsley Lumber Company, and it was conceivable that an arrest might have to be made" (R. 186), and that he had also received a call that same day from the Assistant Solicitor of Dade County who "stated that certain information had been laid before him and it was not completed; that it required some additional investigation, and it was the province of the police department to conduct such investigations to assemble the case to a point where it would be suitable for possible prosecution. And it was with that thought in mind that I cooperated with the County Solicitor's office [by assigning Ford to the investigation]" (R. 187).

The record is replete with evidence that petitioner performed the acts for which he was convicted, not as a private individual but as a

public law enforcement officer."[14] He testified that he "considered the investigation to be too large for me to handle by myself, and I went to the Dade County Solicitor's office in the courthouse, and I requested some assistance in that office" (R. 212). He identified himself to Mrs. Priest, wife of one of the victims, as a "detective" (R. 216), flashing a badge (R. 96). Ford, in the presence of petitioner, told Purnell, another victim, that "they were working out of the Capitol" (R. 42). Robinson, throughout his interrogation, believed that the defendants, including petitioner, were "city detectives" and later informed the doctor who examined him that "I was beaten by city detectives" (R. 64). Petitioner told Priest, "Did you know that I am going to take you to Raiford [the state penitentiary]?" (R. 83). After his interrogation was completed, Priest was taken to the police station. According to the official records of the Miami Police Department introduced at the trial, he was "arrested by J. Williams and J. Avery" (R. 180). Sturniolo testified that he was apprehended by Ford and Williams in the following manner (R. 103): "They came right up to my house in the car. And he [Williams] came up and told me he was going to arrest me for grand larceny. I opened

[14] As to Purnell: R. 30–34, 37, 54–55, 129; as to Robinson: R. 54–56, 58–59, 62, 64–65, 181–182, 219, 229; as to Priest: R. 78, 80–81, 83, 90, 96, 180, 216, 234; and as to Sturniolo: R. 58–59, 102–103, 105, 123, 129, 218, 234, 294–295.

the door and asked them what it was all about, and he put handcuffs on me and started dragging me off."

All these circumstances combined to justify the jury in concluding that petitioner acted here in an official capacity, exercising the usual powers incident to a police investigation of crime. Conceivably, he could have been acting solely and entirely as a private individual, for purely private purposes. But it is clearly a question of fact whether, in conducting the investigation and committing the acts incident thereto, he was acting in a private capacity or in his public capacity as a police officer bent on enforcing the criminal law. Such a question is for the jury (see *Neallus* v. *Hutchinson Amusement Co.*, 126 Me. 469, 139 Atl. 671; *Sharp* v. *Erie R. Co.*, 184 N. Y. 100, 76 N. E. 923; *Rucker* v. *Barker*, 108 Tex. 280, 192 S. W. 528; *Ruffner* v. *Jamison Coal & Coke Co.*, 247 Pa. 34, 92 Atl. 1075; and cases cited in 55 A. L. R. 1205), and petitioner cannot complain because it was resolved against him by the jury in this case.

## CONCLUSION

The Court of Appeals stated (R. 344) that: "This case is another instance where in applying the third degree in an endeavor to unearth a crime a more reprehensible crime was thereby committed." Petitioner was properly convicted of violation of Section 20, and the proof abund-

antly supports the verdict. The judgment below should be affirmed.

Respectfully submitted.

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